

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. ~~438~~ 8

MARGARET M. MCGOWAN, ET AL., APPELLANTS,

vs.

MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF MARYLAND

FILED SEPTEMBER 29, 1959

JURISDICTION NOTED APRIL 25, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 438

MARGARET M. MCGOWAN, ET AL., APPELLANTS,

vs.

MARYLAND.

APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF MARYLAND

INDEX

	Original	Print
Record from Circuit Court of Anne Arundel County, State of Maryland		
Docket entries and judgment	4	1
Suggestion for removal	5	2
Exhibits—Newspaper clippings from "Mary- land Gazette," "Evening Capital" and "Morn- ing Sun"	5	2
Motion of defendant to dismiss warrant	23	19
Testimony in open court	25	20
Appearances	25	20
Colloquy between Court and counsel and rul- ings of Court on motions for postponement, etc.	25	20
Arraignments and pleas	43	37
Testimony of Ashley Vick—		
direct	46	39
cross	48	41
Maxwell Frye—		
direct	54	47
cross (by Mr. Mundy)	58	52
cross (by Mr. Sykes)	63	57
redirect	65	58

Record from Circuit Court of Anne Arundel
County, State of Maryland—Continued

Testimony in open court—Continued

Testimony of Richard S. Disney—

direct 65 59

cross 67 60

Ashley Vick (recalled)—

direct 71 65

Motion for directed verdict and denial thereof 74 67

Testimony of Wilbur C. Wade—

direct 75 68

Testimony of Maxwell Frye—

(recalled)—

direct 79 71

Motion for mis-trial and denial thereof 79 72

Maxwell Frye—

(resumed)—

direct 79 72

Eugene Louis Hopper—

direct 81 73

cross 82 74

Paul Kicey—

direct 83 76

cross 85 78

redirect 87 80

Court's remarks and finding of guilt 90 83

Proceedings in the Court of Appeals of the State
of Maryland 94 88

Opinion, Hammond, J. 94 88

Mandate 105 96

Clerk's certificate (omitted in printing) 106 96

Notice of appeal to the Supreme Court of the United
States 107 97

Order noting probable jurisdiction 110 99

[fol. 1]

IN THE COURT OF APPEALS OF MARYLAND

September Term, 1958

No. 237

MARGARET M. MCGOWAN, et al., Appellants,

v.

STATE OF MARYLAND, Appellee.

Seven Appeals in One Record From the Circuit Court
for Anne Arundel County

(Benjamin Michaelson, Judge)

[fol. 4]

IN THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY

STATE OF MARYLAND

DOCKET ENTRIES AND JUDGMENT

Oct. 14, 1958—Warrant and copy of docket entries from Mag. DeAlbe fld. Charging on or about the 28th day of Sept. 1958, did violate the Sunday sales law.

Oct. 28, 1958—Prayer for Jury Trial on part of State's Atty. fld. Trial held, by agreement consolidated and tried with Nos. 4264-5-6-7-8-70, Pleads not guilty, elects court trial; Motion to Dismiss Warrant fld. (Judge Michaelson). Motion overruled, Finding guilty, Judgment and sentence of court (Judge Michaelson) that you pay a fine of \$5.00 and costs, and stand committed to the County Jail until fine and costs are paid, \$52.50 cash recognizance to be extended for payment of fine and costs.

Nov. 14, 1958—Order to enter appeal to Court of Appeals of Md. fld.

Nov. 19, 1958—Letter and suggestion for Removal fld.

Nov. 26, 1958—Letter and exhibits fld.

Dec. 4, 1958—Petition for extension of time to transmit record to Court of Appeals, and Order of Court thereto fld. (time of transmittal extended to and including 3rd Jan. 1959).

Dec. 30, 1958—Order of Court fld. (extending time for transmittal of Appeal to and including the 10th January 1959).

Jan. 2, 1959—Defendant's Proffer exhibits and Transcript of record fld.

[fol. 5]

IN THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY

SUGGESTION FOR REMOVAL—Filed November 9, 1958

Mr. Clerk:

The defendants suggest that they cannot have a fair and impartial trial in this honorable Court and request that said Court order and direct the record of proceedings in such suit to be transmitted to some other court having jurisdiction in such case for trial.

Margaret M. McGowan, Nina Lee Shiflett, Herbert Mayers, Eugene L. Hopper, Samuel Schepps, Betty R. Sawyer, Dora M. Joswiak.

(Affidavit)

EXHIBITS TO SUGGESTION FOR REMOVAL

Maryland Gazette—September 18, 1958

'2 Guys From Harrison' Open First New Maryland Store In Area Tomorrow.

One of the newer enterprises to hit this area will be "2 Guys from Harrison", whose big, modern store is slated to open on Ritchie Highway, at 6th Avenue Glen Burnie today (Thursday).

Ever since the public began to note the tremendous size of the building housing the store, it has been a source of wonder as to who or what would occupy it. Well, it's "2-Guys from Harrison".

The enterprise represents a chain of 16 stores throughout New Jersey, Pennsylvania and New York and they selected this present site as that for their first Maryland venture. [fol. 6].

Varied Stock

The "2 Guys" will sell a large selection of apparel, toys, appliances, photography supplies, hardware, domestics and will feature the largest drug department in the entire area, with prescriptions accurately filled at reasonable prices. They advertise that all purchases may be made through the "2 Guys" easy credit plan.

The new store will bring employment to virtually hundreds of persons with a kick-off payroll in excess of \$400,000 a year. It is self-contained in a huge dome-like building that is an eye-catcher to passing motorists.

"2 Guys" are using a saturation-coverage of advertising to announce their opening this week, the Maryland Gazette being a part of that medium. We call our readers attention to their full-page advertisements found elsewhere in this issue.

Maryland Gazette—September 25, 1958

Wade Announces:

County Police Will Enforce Law on Sunday Store Sales.

The Anne Arundel County Police Department will enforce the law which prohibits the sale of various articles of merchandise on Sunday, it was announced Tuesday in a formal statement issued by Chief Wilbur C. Wade, head of the department.

Chief Wade's statement follows:

"In the past we have received a number of complaints of the sale on Sunday of merchandise that is prohibited by law. We plan to rigidly enforce this law and feel that it is only fair to the merchants to forewarn them of this.

"The law permits the sale of only the following articles on Sunday: Tobacco, cigars, cigarettes, candy, sodas and soft drinks, ice, ice cream, ices and other confectionery, milk, bread, fruits, gasoline, oils and greases, drugs, medicines and patent medicines, newspapers and periodicals."

[fol. 7] The Maryland Code provides a fine of not less than \$20 nor more than \$50 for the first offense; not less than \$50 nor more than \$500, imprisonment for not less than 10 nor more than 30 days and revocation of license for the second offense. For a third offense a penalty of from 30 to 60 days is provided, along with a fine of not less than double that imposed in the last preceding conviction and loss of license.

Evening Capital—September 29, 1958

Police Accuse 20 of 'Blue Law' Violation Plainclothesmen Raid Eight Stores

Teams of police in plain clothes yesterday raided eight stores in northern Anne Arundel County and arrested 20 persons on charges of violating the law prohibiting the sale of certain articles on Sunday.

Those arrested included cashiers, clerks and store managers. All posted \$52.50 collateral and were released pending a hearing at 10 A.M. Thursday in magistrate's court at Ferndale.

The "blue law" squad, operating under the direction of Capt. George W. Wellham of the county police at Ferndale, began the raids at 1:30 P.M. and completed them within an hour.

Arrests were made at Two Guys from Harrison, Ritchie Highway, Glen Burnie; Eddie's Supermarkets at Harundale and Orchard Beach; two Sun Ray Drug Stores at Brooklyn Park; Sanitary Food Market, Brooklyn Park; Whitey's Supermarket, Linthicum, and Jerman's Food Market, Gambrills.

Operating in plain clothes were Lt. Max Muller; Sergeants Nathan C. Stinchcomb, John T. Erbe, Roy Volrath, Ashly Vick, Maxwell V. Frye, Jr., and James Moreland; Corporals Bernard E. Kiessling and Richard S. Disney and Pat. 1-c Joseph Bassford.

Police Chief Wilbur C. Wade had announced last week that his department had received many complaints about [fol. 8] "blue law" violations and said the ban against certain Sunday sales would be strictly enforced.

The state law provides that only such specified articles as tobacco products, confections, milk products, bread, gasoline, drugs, newspapers and magazines may be sold on Sunday.

Those Charged with violations were listed on official arrest slips as:

Jack Greenberg, 33 of the 5700 block Winner Ave., Baltimore.

Mrs. Gertrude A. Lashley, 25, of the first block Wendover Rd., Marley Park.

Herbert Mayers, 40, of the first block Salem Court, Pikesville.

Mrs. Nina L. Shiflett, 28, of Point Pleasant.

Eugene L. Hopper, 26, of the 400 block North St., S.E., Glen Burnie.

Samuel Scheps, 48, of the 4000 block Wabash Ave., Baltimore.

Mrs. Betty R. Sawyer, 31, of Millersville.

Miss Margaret M. McGowan, 26, of the 700 block Riverside Rd., Brooklyn Park.

Mrs. Dora M. Joswiak, 30, of the 300 block Furnace Branch Rd., N.W., Glen Burnie.

Miss Mary Popp, 18, of Tickneck Rd., Pasadena.

Martin E. Radtke, 46, of the 700 block Colorado Ave., Baltimore.

Charles E. Thomas, 21, of the 700 block Heath Ave., Linthicum.

Kenneth H. Roberts, 20, of the 100 block Nursery Rd., Linthicum.

Ben H. Rosenstein, 51, of the 2600 block Keyworth Ave., Baltimore.

[fol. 9] Deco O. Neal, 40, of the 500 block Forest Dr., Pasadena.

Bernard Billian, 28, of the 3600 block Bowers Ave., Baltimore.

Howard C. Simon, 20, a soldier at Fort Meade working at one of the drug stores.

Mrs. Nancy L. Duvall, 19, of Cedar Dr., Severn.

Joseph J. Waldsachs, 31, of the 1700 block Waverly Way, Baltimore.

Ramond M. Jerman, 56, of Gambrills.

Maryland Gazette—October 2, 1958.

Police Arrest 20 For 'Blue Law' Violations At 8 Places.

Teams of police in plain clothes Sunday raided eight stores in northern Anne Arundel County and arrested 20 persons on charges of violating the law prohibiting the sale of certain articles on the Sabbath.

Those arrested included cashiers, clerks and store managers. All posted \$52.50 collateral and were released pending a hearing at 10 A.M. Thursday in magistrate's court at Ferndale.

The "blue law" squad, operating under the direction of Capt. George W. Wellham of the county police at Ferndale, began the raids at 1:30 P.M. and completed them within an hour.

Arrests were made at Two Guys from Harrison, Ritchie Highway, Glen Burnie; Eddie's Supermarkets at Harundale and Orchard Beach; two Sun Ray Drug Stores at Brooklyn Park; Sanitary Food Market, Brooklyn Park; Whitey's Supermarket, Linthicum, and Jerman's Food Market, Gambrills.

Operating in plain clothes were Lt. Max Muller, Sergeants Nathan C. Stinchcomb, John T. Erbe, Roy Volrath, Ashly Vick, Maxwell V. Frye, Jr. and James Moreland; [fol. 10] Corporals Bernard E. Kiessling and Richard S. Disney and Pat. 1-c Joseph Bassford.

Police Chief Wilbur C. Wade had announced last week that his department had received many complaints about "blue law" violations and said the ban against certain Sunday sales would be strictly enforced.

The state law provides that only such specified articles as tobacco products, confections, milk products, bread, gasoline, drugs, newspapers and magazines may be sold on Sunday.

Those Charged with violations were listed on official arrest slips as:

Jack Greenberg, 33, of the 5700 block Winner Ave., Baltimore.

Mrs. Gertrude A. Lashley, 25, of the first block Wendover Rd., Marley Park.

Herbert Mayers, 40, of the first block Salem Court, Pikesville.

Mrs. Nina L. Shiflett, 28, of Point Pleasant.

Eugene L. Hopper, 26, of the 400 block North St. S.E., Glen Burnie.

Samuel Scheps, 48, of the 4000 block Wabash Ave., Baltimore.

Mrs. Betty R. Sawyer, 31, of Millersville.

Miss Margaret M. McGowan, 26, of the 700 block Riverside Rd., Brooklyn Park.

Mrs. Dora M. Joswiak, 30, of the 300 block Furnace Branch Rd., N.W., Glen Burnie.

Miss Mary Popp, 18, of Tickneck Rd., Pasadena.

Martin E. Radtke, 46, of the 700 block Colorado Ave., Baltimore.

Charles E. Thomas, 21, of the 700 block Heath Ave., Linthicum.

[fol. 11] Kenneth H. Roberts, 20, of the 100 block Nursery Rd., Linthicum.

Ben H. Rosenstein, 51, of the 2600 block Keyworth Ave., Baltimore.

Deco O. Neal, 40, of the 500 block Forest Dr., Pasadena.

Bernard Billian, 28, of the 3600 block Bowers Ave., Baltimore.

Howard C. Simon, 20, a soldier at Fort Meade working at one of the drug stores.

Mrs. Nancy L. Duvall, 19, of Cedar Dr., Severn.

Joseph J. Waldsachs, 31, of the 1700 block Waverly Way, Baltimore.

Ramond M. Jerman, 56, of Gambrills.

Evening Capital—October 6, 1958

Hearing Set:

Police Charge Seven More With Breaking Sunday Laws.

Continuing their crackdown on Sunday "blue law" violations, county police yesterday arrested seven persons at a general store on Ritchie Highway, at Glen Burnie.

All of them were accused of violating the law which prohibits the sale of certain articles on Sunday. Each posted \$52.50 collateral for a hearing at 10 A.M. Thursday in Ferndale magistrate's court.

Police Chief Wilbur C. Wade said police checked stores in Glen Burnie, Brooklyn, Linthicum, Edgewater and other places and found that most of them were complying with the Sunday law.

In fact, he said, some of the stores had closed down altogether for the Sabbath.

Those arrested yesterday at the "Two Guys from Harrison" store were listed by police as:

[fol. 12] Mel H. Berlin, 44, of the 3900 block Penhurst Avenue, Baltimore, who was identified as manager of the clothing department.

Paul Kicey, 36, a Jersey City, N.J., man with a local address at a Glen Burnie motel, manager of the retail store.

Mrs. Vivian Irene Krazewski, 32, a clerk, of Pasadena, Maryland.

Mrs. Mary Jane Heppding, 20, a cashier, of the 400 block of Seventh Avenue, Glen Burnie.

Mrs. Doris Mary Wiley, 32, clerk-cashier, of the 400 block Fourth Street, Glen Burnie.

Mrs. Jenny Schaps, 50, of the 4000 block Wabash Avenue, Baltimore, identified as a housewife rather than a store employee.

Miss Isabel W. Male, 43, a cashier, of Fort Worth, Texas, with a local address at a Glen Burnie motel.

Participating in the crackdown yesterday were Sgt. Edward Praey and Cpls. Bernard Kessling and Richard Disney of the Ferndale station, and Sgts. Ashley Vick and James Moreland of the Edgewater station.

The store visited yesterday by the plainclothes squad was one of several raided the week before when the "blue law" crackdown began.

Twenty persons were arrested in the first raids. Five of them were fined \$20 and jury trials were scheduled for the others.

Maryland Gazette—October 9, 1958

Sunday Arrests Made After Chamber Protest

Police action to enforce the Sunday "blue law" was precipitated after complaints were made of illegal sales, letters sent to the State's Attorney and governor and warnings issued, it was learned yesterday.

When the police crackdown started, it resulted in raids on two successive Sundays on stores in the northern section of Anne Arundel County and the arrest of 27 persons charged with violating the law which prohibits the sale of certain merchandise on the Sabbath.

The crackdown also has aroused sentiment in some quarters for action by the Legislature to repeal or revise the law, which many persons feel is antiquated.

State's Attorney C. Osborne Duvall said the first complaints followed advertisements indicating that some stores would operate on Sunday. These complaints, he said, came from attorneys representing Glen Burnie merchants.

Inquiries and complaints also were lodged with Chief of Police Wilbur C. Wade. He asked Duvall what to do and the state's attorney instructed him to observe the store of Two Guys from Harrison and others. This was done and warnings against Sunday violations were issued.

Subsequently, Duvall said, he received a letter from Paul Fleischmann, president of the Glen Burnie Chamber of Commerce, under date of Sept. 23, asking him to look into alleged violations of the "blue law."

Fleischmann said in his letter the merchants were unalterably opposed to Sunday commerce and urged the state's attorney to nip it in the bud.

With the letter was a copy of one Fleischmann had sent to Governor McKeldin, saying that Sunday openings were planned on a large scale. Fleischmann said it was an "odious" situation and asked the governor to do something about it.

The governor was attending the Southern Governors Conference in Lexington, Ky., at the time, but his office acknowledged receipt of the letter and replied it was a matter for the county authorities to handle.

Duvall said that as a result of the letter he received from Fleischmann he directed Chief Wade to see that the law was strictly enforced.

Wade made a public announcement that he would do so. The first crackdown was made Sunday, Sept. 28 and 20 [fol. 14] persons were arrested. Another was made last Sunday and seven persons arrested.

On Sept. 26, Duvall received a personal visit from C. Bowie Rose, Glen Burnie attorney, and Herbert Hubschman, president of Two Guys from Harrison, who were opening a large general store in the Glen Burnie area.

Also present were Assistant State's Attorney Clarence L. Johnson and Chief Wade.

Duvall said Rose and Hubschman expressed the opinion that the "blue law" probably was not constitutional. The state's attorney expressed no personal opinion on this, but said any citizen has the right to question the validity of any law.

He said Rose and Hubschman assured him the store was being located in the Glen Burnie area in good faith and that they had no intention of upsetting accepted practices in the community.

Duvall replied that the store could show its good faith by not opening on Sunday until the Legislature could be called upon to change the law, if the people wanted it changed.

However, the Two Guys from Harrison opened the following Sunday and was one of several at which arrests were made. It also opened last Sunday and again several persons were arrested.

Meanwhile, Schreiber Bros., Inc., has filed a suit against the Glen Burnie Shopping Plaza and Two Guys from Harrison, Inc., alleging the store had broken a lease arrangement by selling merchandise to which Schreiber's had been given exclusive rights.

A temporary restraining order has been issued in the case.

Duvall said that as he sees it, the remedy of the "blue law" situation lies with the Legislature.

It Would Appear, he said, that the public does not like the strict Sunday law. But, he added, his job is to enforce the law, not to legislate.

[fol. 15] Unfortunately, Duvall said, some of the merchants who have been hurt the most are small ones who have been serving their neighbors for years.

Practically all stores throughout the county were closed last Sunday, with the exception of those in Annapolis.

R. D. Pippen, executive secretary of the Glen Burnie Chamber of Commerce, said the organization was writing to Chief Wade to thank him for his cooperation in enforcing the law.

Some persons have contended that the law works a hardship by prohibiting the Sunday sale of such necessities as canned goods, baby bottles and pens, pencils and notebooks for children to use in their homework.

The law is so strict that it prohibits the giving away of certain merchandise.

All It Allows to be sold on Sunday are tobacco products, milk and milk products, bread, candy and confections, fruit, gasoline, oil, grease, soft drinks, drugs, medicines, newspapers and magazines.

A first offense is punishable by a fine of \$20 to \$50; a second offense by a fine of \$50 to \$500 and 10 to 30 days in Jail.

Second offenders also may have their trade licenses revoked for a year.

Maryland Gazette—October 9, 1958

Chamber Praises Police For 'Blue Law' Activity

The Board of Directors of the Glen Burnie Chamber of Commerce voted Monday to (1) oppose further row-housing in the county and (2) commend Police Chief Wilbur Wade for enforcement of "Sunday blue laws."

Several members of the professional section of the Chamber—one attorney and two architects—opposed the row-house motion on the grounds that the action was "too broad."

[fol. 16] The move praising "blue law" enforcement was taken amidst rumblings that "there is more to this than meets the eye" heard after the meeting broke up. Many expressed concern to the *Gazette* that the laws themselves presently are "most inequitable and must be adjusted."

In other business, the directors heard immediate last president William L. McDowell urge members of an off-sprint "Glen Burnie Merchants' Association" to return to the official auspices of the Chamber, to take their "rightful place" in the leadership of the trade body.

After lengthy discussion—including a talk from merchant Nat L. Schein stating the group was "not against" the Chamber—President Paul Fleischmann named Norman DuBois to study the "problem" and report back to the Board.

And: the recent dinner meeting of the organization was revealed to have made "\$2.28 profit" and three new members—Stiffe Co., Acromat, Inc. and Pumphrey General Store—were admitted.

Maryland Gazette—October 9, 1958

Police Charge Seven More With Breaking Sunday Laws.

Continuing their crackdown on Sunday "blue law" violations, county police Sunday arrested seven persons at a general store on Ritchie Highway, at Glen Burnie.

All of them were accused of violating the law which prohibits the sale of certain articles on Sunday. Each posted \$52.50 collateral for a hearing at 10 A.M. today, Thursday in Ferndale magistrate's court.

Meanwhile, five persons arrested the previous Sunday—at various stores—were fined \$20 each in Ferndale Police Court. Five other cases from the Sept. 28 arrests were held over for jury trials.

Police Chief Wilbur C. Wade said police checked stores in Glen Burnie, Brooklyn, Linthicum, Edgewater and other [fol. 17] places and found that most of them were complying with the Sunday law.

In fact, he said, some of the stores had closed down altogether for the Sabbath.

Those arrested Sunday at the "Two Guys from Harrison" store were listed by police as:

Mel H. Berlin, 44, of the 3900 block Penhurst avenue, Baltimore, who was identified as manager of the clothing department.

Paul Kicey, 36, a Jersey City, N.J., man with a local address at a Glen Burnie motel, manager of the retail store.

Mrs. Vivian Irene Krazewski, 32, a clerk, of Pasadena, Maryland.

Mrs. Mary Jane Heppding, 20, a cashier, of the 400 block of Seventh avenue, Glen Burnie.

Mrs. Doris Mary Wiley, 32, clerk-cashier, of the 400 block Fourth street, Glen Burnie.

Mrs. Jenny Scheps, 50, of the 4000 block Wabash avenue, Baltimore, identified as a housewife rather than a store employee.

Mrs. Isabel W. Male, 43, a cashier, of Fort Worth, Texas, with a local address at a Glen Burnie motel.

Participating in the Sunday crackdown were Sgt. Edward Praley and Cpls. Bernard Kessling and Richard Disney of the Ferndale station, and Sgts. Ashley Vick and James Moreland of the Edgewater station.

The store visited yesterday by the plainclothes squad was one of several raided the week before when the "blue law" crackdown began.

Twenty persons were arrested in the first raids. Five of them were fined \$20 and jury trials were scheduled for the others.

[fol-18] *Evening Capital*—October 13, 1958

Continue Check on Sunday Sale Law in County Police Arrest Two In North County

Continuing their check on Sunday "blue law" violations, Anne Arundel county police yesterday found most of the larger stores complying with the law, while practically all of the smaller stores were closed.

Only two arrests were made as the police visited 15 of the larger places in northern Anne Arundel and checked many of the smaller ones to see that prohibited merchandise was not being sold on Sunday.

Sgt. Edward A. Praley reported that he made two arrests at the store of 2 Guys from Harrison at Glen Burnie when he bought a pair of pants.

Charged with an illegal Sunday sale were John F. Conlee, 25, of Pasadena, manager of the men's clothing department, and Miss Alice Maye Weber, 1 of Glen Burnie, cashier.

Both posted \$2.50 collateral for a hearing in magistrate's court at Ferndale at 10.30 A. M. Thursday.

Evening Capital—October 14, 1958

Ministerium To Get Proposal On Sunday Laws

The Rev. Curtis Crawford said today he will introduce a resolution at tomorrow's meeting of the Anne Arundel County Ministerium calling for a "strengthening" of laws prohibiting the Sunday sale of nonessential merchandise.

The measure, which calls for the support of the county's candidates for election to the State Legislature, would provide that the Sunday laws be "strengthened to prohibit all Sunday business transactions not indispensable to health and safety."

In addition, the Unitarian minister said he will ask the Ministerium to join him in condemning "policies of governmental compulsion of religious observance, such as the Naval Academy rule of compulsory church attendance for midshipmen."

[fol. 19] The complete text of the proposed resolution is as follows:

"Whereas, a weekly commercial recess is vital to the society's health, leisure and order;

"Whereas, such a recess cannot be achieved by individual voluntary decision;

"Whereas, the religious and leisure customs of a substantial majority make Sunday the most convenient day;

"Therefore, be it resolved that the Sunday laws of Anne Arundel County be strengthened to prohibit all Sunday business transactions not indispensable to health and safety;

"Be it further resolved that any Sunday law which compels or induces a religious or sectarian observance be repealed;

"Be it further resolved that local candidates for the State legislature be urged to support this position in the current campaign;

"Be it further resolved that policies of governmental compulsion of religious attendance for midshipmen are contrary to the spirit of this resolution, and are hereby condemned."

Evening Capital—October 20, 1958

Police Arrest 8 On "Blue Law" Charges

County police arrested eight more persons on charges of Sunday "blue law" violations yesterday and State's Attorney C. Osborne Duvall said the first of some 30 pending cases would be tried next week.

The prosecutor said it was apparent that some merchants were determined to make a court test of the "blue law", which prohibits the Sunday sale of certain merchandise in Anne Arundel county.

Before yesterday's arrests, approximately 30 cases had been marked for jury trials. Duvall said he expected about half of them would come up for trial at the current term of Circuit Court here.

[fol. 20] Those arrested yesterday posted \$52.50 collateral each and were released for hearings before Magistrate Louis J. DeAlba at Ferndale at 10 A.M. Thursday.

The arrests, made at three stores in the Glen Burnie area, marked the fourth successive Sunday on which county police had cracked down on alleged "blue law" violations.

Cpl. Richard S. Disney and Patrolmen Richard Berger and George W. Bartlett reported the following arrests:

At 2 Guys from Harrison, Ritchie Highway, Glen Burnie:

Milton Fontz, 26 Elvaton Road, near Glen Burnie.

Mrs. Irma Anna Hostler, 18, 700 block Patapsco Ave., Baltimore.

Mrs. Margaret Thompson, 38, Brooklyn Park.

Mrs. Geraldine Rae Glinka, 33, 400 block M St., Glen Burnie.

At the Sanitary Grocery, 5000 block Ritchie Highway, Glen Burnie:

Mrs. Patricia Louise Salopek, 24, 500 block West Way, Glen Burnie.

Samuel Friedman, 41, who gave the store as his address.

At the Allen Drug Store, Harundale:

Allen Shenker, 29, 4700 block Garrison Blvd., Baltimore.

His father, Morris Shenker, 60, same address.

Police said the sales involved a pound of coffee, a can of spaghetti sauce, an electric extension cord, a ladies' blouse and a man's sport shirt.

Evening Capital—October 27, 1958

County Police Make Sunday Sales Arrests In Two Areas

Anne Arundel County police visited business places in both the northern and southern sections yesterday and [fol. 21] arrested 16 more persons on charges of violating the Sunday "blue law".

Police from the Ferndale station made 13 arrests at Glen Burnie, Gambrills, Harundale and Odenton, while officers from Edgewater made three other arrests at Deale and Mayo.

It was the fifth consecutive Sunday on which arrests had been made since police began cracking down on violations of the law which prohibits sale of certain merchandise on the Sabbath.

Those charged were:

• At 2 Guys from Harrison, Glen Burnie, James E. Verrick, 30, of Brooklyn, assistant manager; Del F. Roach, 25, of Pasadena, assistant manager; Mrs. Edna Mae Wooden, 23, of Brooklyn, sales clerk, and Mrs. Eleanor E. Carrek, 26, of Glen Burnie, sales clerk.

At Clauss's Food Market, Glen Burnie, Leonard W. Ensley, 30, sales clerk, and William O. Clauss, 53, owner of the store, both of Glen Burnie.

At Jerman's IGA Foodliner, Gambrills, Raymond M. Jerman, Jr., 19, of Gambrills, part-time clerk, and Mrs. Frieda Dehne, 27, of Gambrills, cashier.

At Carr's Betholine Station, Old Annapolis and Mountain roads, Walter T. Gray, 21, of Pasadena.

At Eddie's Super Market, Harundale, Thomas R. Wilson, 23, assistant manager, and Daniel S. Conrad, 18, clerk, both of Harundale.

At the Odenton Pharmacy, Miss Margaret B. Johnson, 32, clerk, and Harvey E. Basik, 32, druggist, both of Odenton.

At Captain Kidd's Grocery, Deale Raymond F. Selby, clerk.

At Dave's Corner, Mayo Richard L. Robinson, clerk, and Robert L. Brashears, owner.

[fol. 22] All of those charged posted \$52.50 collateral. Those arrested by Ferndale police will be given hearings Thursday. The others will have hearings at Edgewater on Nov. 3.

Policemen participating in the arrests were Patrolmen Richard Berger, George Bartlett, Edwin Prieber and James Werner, of Ferndale and Sgt. James W. Moreland and Patrolman Joseph O. Bassford of Edgewater.

The first of the "blue law" cases which have been referred to the Circuit Court are expected to come up for trial tomorrow.

Morning Sun—November 7, 1958

Stand Voiced On "Blue Law"

Arundel Group Asks Strict Enforcement Or None

Annapolis, Nov. 6 (AP)—Anne Arundel county commissioners have proposed that the State's Sunday "blue law" be enforced "100 per cent in all areas of the county" or not at all.

The request for total enforcement was not intended as an indorsement of the law but as an indication that the law is inequitable and is not being enforced uniformly.

Marvin L. Anderson, board counsel, today began preparing a resolution expressing the commissioners' position. It will be sent to the State's attorney, C. Osborne Duvall, and Police Chief Wilbur C. Wade.

The resolution was ordered yesterday after a public hearing on the controversial law which bans the sale of certain items on Sunday.

"No-Authority"

Several board members expressed the view that 100 per cent enforcement would be impossible. But they said the law should not be enforced at all unless it can be applied to all violators.

[fol. 23] "If the State's attorney can't enforce it 100 per cent," said the board president, Ralph L. Lowman, "he has no authority to persecute me over you or you over me."

About 40 persons appeared at the hearing to protest the recent crackdown on restricted sales.

Solomon Liss, a member of the Baltimore City Council who appeared as attorney for several county merchants, urged the commissioners to ask Governor McKeldin to call a special session of the Legislature to modify the law.

"Equal Treatment" Asked

Liss said some small business men may be forced out of business unless the law is modified before the Legislature meets again in January.

Harry Silbert, attorney, appeared for owners of a Glen Burnie variety store and urged that his clients be given "equal treatment under the law."

He said employees of the firm were convicted of illegal Sunday sales "while the very same merchandise is being sold all over Anne Arundel county every Sunday."

Some 30 persons have been arrested on recent Sundays, most of them in the Glen Burnie area. Some of those fined are expected to appeal their convictions to test the law's constitutionality.

Bernard S. Melnicove, attorney for the Maryland Pharmaceutical Association urged modification of the law as it pertains to drug stores.

IN THE CIRCUIT COURT OF ANNE ARUNDEL COUNTY

MOTION OF DEFENDANT TO DISMISS WARRANT—Filed
October 28, 1958

The Defendant by the undersigned counsel respectfully moves the Court to dismiss the warrant in this case upon the following grounds and for the following reasons:

[Col. 24] 1. The Defendant has not been indicted pursuant to the express requirements of Article 27, Section 521 of the Code.

2. The statutes under which the Defendant is charged violate the Equal Protection and Due Process Clauses of the Federal and State Constitutions.

3. The statutes under which the Defendant is charged are arbitrary, capricious, and unconstitutional upon their faces in that there is no reasonable basis for the distinctions made therein, between what is and what is not permissive in the way of work and sales on Sunday.

4. The statutes under which the Defendant is charged on their faces arbitrarily discriminate against the activity in which the Defendant is engaged.

5. The statutes under which the Defendant is charged are vague, ambiguous, contradictory, and do not give reasonable notice of the conduct sought to be established as criminal.

6. The statutes under which the Defendant is charged violate the guarantee of freedom of religion and separation of church and state provided for in the Federal and State constitutions and discriminate against persons who observe other sabbath days than Sunday.

7. This proceeding constitutes part of a pattern of discriminatory enforcement of the statutes under which the Defendant is charged by reason among others of the fact that the said statutes have not been enforced for a long period of time and this Defendant and certain others in similar circumstances have been discriminatorily selected for enforcement by reason of the pressures generated by

certain business competitors who have attempted to employ the said statutes as a means of oppression and elimination of business competition.

8. And for other reasons shown at the hearing hereof.

Cornelius P. Mundy, Herbert H. Hubbard, Melvin J. Sykes, Attorneys for Defendant.

[fol. 25]

**Testimony in Open Court Before
Hon. Benjamin Michaelson**

October 28, 1958

Present:

HON. BENJAMIN MICHAELSON

APPEARANCES

Mr. C. Osborne Duvall, State's Attorney.

Mr. Clarence L. Johnson, Asst. State's Attorney.

Mr. Cornelius P. Mundy, Mr. Herbert H. Hubbard, and Mr. Melvin J. Sykes, Solicitors for Defendants.

**COLLOQUY BETWEEN COURT AND COUNSEL AND RULINGS OF
COURT ON MOTIONS FOR POSTPONEMENT, ETC.**

Mr. Mundy: For the record, may I say, we were all employed in the case for the first time yesterday. I was first approached by the corporation, I suppose it is, that employs these defendants, around 12:30, my colleagues came into the conference sometime later in the afternoon. We feel that there are some very serious constitutional questions involved, which we have not been able to do justice to during the short time of our employment. We should like additional time to be able to show that the statutes upon which these prosecutions are predicated are invalid on their face, are contrary to the provisions of the state and federal constitutions. We should also like to show that these statutes have been discriminatorily enforced, and I say that not meaning any criticism upon the enforcement officers of this state; according to our understanding there is little or no enforcement, and I'm subject to correc-

tion on this statement, until about five weeks ago there was none. Beyond that the statutes have not, again, according to our understanding, been enforced uniformly, as against all merchants whose activities are proscribed by the statutes. In order to present that phase of the constitutional question we should, of course, have to call witnesses to show the pattern of the enforcement. We are not in a position to call such witnesses this morning. Now, if the Court wishes I shall make all my motions at this time so that you'll have them all before you.

Court: Proceed.

[fol. 26] Mr. Mundy: We move that the prosecution be dismissed, one reason for that motion is, that the trial today when it's held will be upon warrants, no indictment, no information has been returned. We submit to Your Honor that under Section 521 of Article 27 the statute which prohibits merchandising on Sunday indicates that this should be either an information or an indictment filed. We assert to Your Honor that the section of the statute, if enforced in these cases, would constitute a denial of due process and of the equal protection of the laws in contravention of both federal and state constitutions. We move that the sections violate the due process, and equal protection clauses, because they are arbitrary and capricious, because there is no reasonable basis for the various distinctions made because of discrimination against the defendant's businesses, because the statutes are vague and do not give reasonable notice of the conduct defined as criminal. One of the sections, Section 509, with which I'm sure Your Honor is much more familiar than I, constitutes an exception to the Sunday laws as to Anne Arundel County, that exception has to do with bathing beaches, bath houses, amusement parks, and other places. There is also an exception in that section that removes from the legality, the sale or selling at retail of any merchandise essential to or customarily sold or incidental to the operation of the aforesaid occupations or business, Picnic groves, amusement games, amusement devices. I call Your Honor's attention to the phrase essential to or customarily sold or incidental to the operation of the aforesaid occupations. Had we the time to present this case adequately, we should

have investigated, visit, the various amusement parks, beaches, to show what is essential to or customarily sold at those places, and we would then endeavor to show that the sales made by our clients come within that exception. Owing to the short time that we have had to prepare for trial, we find that we are unable to produce that testimony this morning. Again, with great respect for this Honorable Court, we should like to move for a removal of the cases from this Circuit, because according to our information there has recently, especially, been considerable agitation [fol. 27] concerning these so-called Sunday Laws in this county. We have not, at the moment, in readiness the necessary affidavits of removal. We are aware, of course, that in this type of case removal is discretionary with Your Honor. We should like to be given the privilege of filing those motions within some reasonable time, and I refer, specifically, to all the motions that I've made this morning which might be required to be in writing, and that Your Honor will pass upon these motions now, although, made orally as if the motions were before this Honorable Court in writing. As one of my colleagues points out to me, apropos of the removal point, we should like to file certain documentary evidence including newspaper clippings from this county to show that in our humble opinion, there could not be a fair trial in this jurisdiction. Now, there is a statute, I don't know the reference to it off-hand, that requires a prosecution for this type of violation to be instituted within thirty days from the date of the violation, that's possibly a plea of limitation or possibility it should be raised by motion for dismissal. We move, additionally, that the prosecutions be dismissed because of the belatedness. Now, may I before closing, make another constitutional point that we should like with adequate time to make, is that the Sunday Laws violate the First Amendment to the Constitution of United States, which under corresponding provisions of Maryland Constitution, which, of course, guarantees separation of State from religion. Now, may it please Your Honor, I should like at this time to thank the Court for hearing these motions, and as one who is greatly influenced by courtesy and graciousness, I should

like to say publicly that I communicated with Mr. Duvall yesterday to get information concerning these cases, and he dropped all the work that he was doing and went out of his way to give me the necessary help, and I'm sure that he'll go out of his way this morning to have us convicted if possible, and I respect him for that. Thank you.

Court: Does the State wish to say anything?

Mr. Duvall: May it please the Court, the State feels that all of the motions made on behalf of all these defendants should be overruled at this point. Directing myself first to the basis of the motion for the removal of these cases, the State would point it out, that the newspaper accounts to which my brother referred, were a merely a recitation of the police activity in these various establishments which gave rise to the arrest that were made, which are before the Court today. There was nothing in the newspaper accounts that was in any way inflammatory or prejudicial to the rights of these accused to have a fair and impartial trial before a jury that appears in this county. We feel there cannot be any showing of facts in support of this motion which would indicate to the Court that its discretion should be invoked to the point of removing these cases from the Circuit.

With respect to the motion as to plea of limitation, on the face of the warrants, which is all that the Court has before it at this time, you will find that the warrants were obtained prior to the expiration of thirty days from the date of the offense named in the warrant, and it's the State's understanding that the obtention of a warrant or the filing of an indictment or information stops the running of limitation, for that reason, we feel that motion is not valid. The basis of the motion for dismissal of the warrants that my brother raised regarding the failure of this prosecution to be predicated on an indictment or information, the State points out that this type of case which may be tried before a Trial Magistrate can properly be tried on a warrant. The Court may recall this very point was raised in some book making cases before this Court some three or four years ago, in which the defendants were brought to trial on warrants, similar to what we have in this instance, and the defense counsel raised that point,

that the language of the statute says, that a person in effect, and I'm speaking from memory, shall be tried on indictment or information.

Court: You're talking about the Rizzo case?

Mr. Duvall: The Rizzo and the companion case, Salsburg. We feel that proposition is authority for the Court to deny the motion to dismiss on that ground.

[fol. 29] With respect to the suggestion that my brother made, that the statute involved, Section 521, violates the First Amendment of the Constitution of the United States, and its corresponding provision of the Maryland constitution, the State directs the Court's attention to two cases which have gone to the Court of Appeals of this State; one is the Levering case, I think, 134 Md., 48; and the Judefind case in 78 Md. Those two cases, may it please the Court, were cases in which the constitutionality of the section pertaining to labor on Sunday, which is now—

Court: Section 492, I think the section is.

Mr. Duvall: Yes sir, section 492 of the recent code. In that case the Court of Appeals said in effect, as I recall the opinion, and I frankly, do not have it abstracted, that it is within the province of the legislature to pass laws which are civil in nature and require a day of rest from one's labor. And that question of the breach of religious freedom, as provided under the First Amendment, was specifically raised and disposed of. The Court of Appeals in both of those cases said that these laws were not religious, but were civil, and that, reflecting the attitudes and views of the public at large, that the legislature could pass such a statute and it did not contravene those sections of the constitution, to which reference has been made. My brother further stated, as a basis for this motion to dismiss, that the statute in question was a denial of due process and equal protection of law. There are a number of cases, I cannot cite them by chapter and verse at this point, but there are a number of them, I will work them and submit a memorandum if the Court desires, which hold, that the State may classify types of merchandise sold, types of work to be performed, and that it is a valid regulation under the police power of the State. And those cases where these laws have been attacked on those two grounds,

namely, the denial of due process and the protection of the laws, the Courts have, in my limited reading of the matter, a uniformity held as in the power of the legislature to set up those distinctions. Now, it might be pointed out at this time that we are dealing not with a statute particularly applicable to Anne Arundel County, but a statute which has state wide application except in so far as it may be modified in political sub-divisions that have home-rule, and Baltimore City has an ordinance which it has modified it to some extent, and I believe, Baltimore County under its charter provisions has home-rule, and the county council there has passed an ordinance to modify it, but it has state-wide application, there did not appear to me on the face of the statute to be any prohibition or exception which denies the people of this state the equal protection of the law or of due process. I believe, I have endeavored to answer the—Mr. Johnson has pointed out that Mr. Mundy made a statement regarding Section 509. The State's position there is simply this, that Section 509 is an act passed by the legislature which exempts certain activity in Anne Arundel County from the effect of Section 492 and Section 591. There again, as in the Salsburg case, the Court of Appeals has held that the legislature may except a county from the force and effect of a state law, and so long as it has county wide application it does not contravene the provisions of the Constitution relating to the protection of the laws, and Court may recall in the Salsburg case, the statute involved was on which exempted Anne Arundel County and two other counties from the effect of the Bouse Act in so far as operations were concerned. For those reasons, may it please the Court, the State respectfully request that the motion that was made by my brother be overruled.

Mr. Sykes: If Your Honor please, Mr. Hubbard would like to say something, specifically, on point limitations and the necessity for indictment, and then I would like to argue to the Court more specifically as best I can now, the nature of these constitutional points because I'm afraid they've been misconceived by the State's Attorney, and I wanted the basis of them in the record as clearly as I can get them at this time. With Your Honor's indulgence.

Mr. Hubbard.

Mr. Hubbard: May it please the Court, if Your Honor please, I was not familiar with the fact that there had been [fol. 31] a ruling in this Court, I believe, the State's Attorney stated, on the requirement for indictment under Section 521. If there has been such a ruling—

Court: Not under Section 521; but the question has been raised previously as to whether or not it's necessary to have a person tried on information or indictment for a misdemeanor when it happened in a case of a violation of a lottery or gambling act.

Mr. Hubbard: Oh, well, then this is a new point, we did not mean to raise it in that contest. Section 521, the statute under which these defendants are charged reads as follows: no person in this state shall sell, dispose of, barter or deal in, or give away any articles of merchandise on Sunday, except retailers who may sell and deliver on said day tobacco, cigars, cigarettes, candies, sodas and soft drinks, ice, ice cream, ices and other confectionery, milk, bread, fruits, gasoline, oils, and greases; and any person violating any one of the provisions of this section shall be liable to indictment in any Court in this State having criminal jurisdiction, and upon conviction thereof shall be fined etc. Our contention, may it please the Court, that this statute, specifically, for reasons best known for the legislature at the time it was enacted prescribes that these cases must be brought into this Court upon indictment by the Grand Jury, and may not be brought in upon warrants or in any other form, of course, unless there is a voluntary waiver of indictment by the defendants. There has been no such waiver and the defendants assert that they are entitled to be indicted, and the case to be presented to the Grand Jury. Now, in line with that argument there is also a section, the number I don't remember for the moment, which states that prosecution under the Sabbath breaking laws must be brought within thirty days or one month. It is our argument in this case that (one) prosecutions must be brought by indictment, (two) there have been no indictments within the thirty day period, therefore, in those cases where the offense or alleged offense occurred thirty days prior they're barred by limitations. The last point that I'd like to make before Mr. Sykes is

[fol. 32] heard is the fact that when reading Section 509 together with Section 521 and all of the other sections, particularly, those two sections, the statute setting forth a criminal act is so vague and ambiguous as to deny due process to the defendants. It goes without saying, and there's probably little argument about the fact that in order to be subject to criminal sanctions, a law must be so drawn so as to apprise the public just what constitutes the crime.

Court: Well, now, those are all general comments, point out specifically what you have in mind.

Mr. Hubbard: In this case, Section 509, as Mr. Mundy has already commented, states that articles of merchandise which are customarily sold at bathing beaches, dancing saloons, and certain other places may be sold on Sunday.

Court: Wouldn't that argument relate more to prosecution under that section, as the same as prosecution under 521 if we were dealing with cases which were suggested to be violations of Section 509 of Article 27, that argument would have some effect.

Mr. Hubbard: Section 509, sir, it is our contention, does not of itself establish any violation, it merely creates exception under 521, and, I believe, under 492, it expressly says so. It says, that these sections are—I'll read the language of it, "It shall be lawful to operate, work at, or be employed in the occupations of operating any bathing beach,—

Court: Court is familiar with that, you don't have to read it, I read it so many times I can almost—

Mr. Hubbard: All right, sir, and Sections 492, 521, that's our sections, and 522 of this Article are repealed in so far and to the extent that they prohibit the operating of, and/or working law for employment of persons in the operation of any bathing beach, etc., or the sale or selling at retail of any merchandise essential to or customarily sold at, or incidental to, the operation thereof. It is our contention that reading Section 509 together with Section 521, as any lawyer would have to do in advising his client what [fol. 33] he may or may not sell, that it is, virtually, impossible for one to advise his client just what constitutes a crime, because how can one tell merely from reading a statute, and what is common knowledge, just what is cus-

tomarily sold at a dancing saloon or a bathing beach or any of these other places listed in this statute.

Court: That's why the Court made the comment it did. If you were dealing with a case in which Court had to determine whether or not violation of the law as a result of that section, then there may be some applicability of your argument, but the charge is here, as the Court understands, are not violations of Section 492 or Section 509, but Section 521.

Mr. Hubbard: Well, we plan to offer evidence, may it please the Court, if we have time, to show that these people in many instances were actually eliminating certain items from sale.

Court: If you could wave a magic wand and make all these places where these alleged violations of the law occurred bathing beaches, amusement parks, why, you wouldn't have much difficulty, would you?

Mr. Hubbard: No sir, but we feel that that would probably be a matter of evidence, if we have time to present it and are able to obtain our witnesses to show that there was an attempt to sell only items which were customarily sold at these places in many instances, and to come within the exemption of Section 509, thank you.

Mr. Sykes: May, it please the Court, in making this constitutional argument, I don't mean to waive our motion for postponement or other points, I'm just doing the best I can under the conditions we have, but I think it's instructive in this case to give Your Honor the general background of these statutes, specific statutes I'm going to raise. In the beginning we had one Sabbath breaking law, that was Section 492, that prohibited doing work or bodily labor on Sunday except for works of necessity and charity. The Court of Appeals in another day, in the [fol. 34] Levering case, as the State's Attorney has indicated, sustained that, sustained it on the theory that the State has an interest in making sure that its citizens rest at least one day a week; that reasoning is entirely inapplicable to the laws that exist today.

Court: Well, now, you better be careful and choose your words consistent with what you mean, if you're talking now civilly now, that's one thing, if you're talking now from the religious side of it you may have—

Mr. Sykes: I'm talking from the point of view, the way these laws have finally shaped up they don't secure any interest in having anybody rest on one day a week because what happened after the Section 492 was construed and upheld by the Court of Appeals was this, as Your Honor knows, there was a succession of approaches to the legislature on behalf of specific business interest and localities, and exception after exception was carved out of this general statute. You have certain sport exhibitions allowed, you have motion pictures allowed—

Court: Skating rink, bowling alley, and all the others, football, baseball.

Mr. Sykes: Right, then you have general alcoholic beverage law, which permits the sale of beer on Sunday, which is a much more degrading thing than the sale of a cement trowel to putt around in your private garden on Sunday. Now, in addition to that, there is a special law in Anne Arundel County which applies to motion picture theatres, and there is Section 509, which I'll comment on in a minute, finally, there was a Section 521 under which the indictments are laid here, I mean, under which the warrants are laid here, in which there are several exceptions, even to the sales provision. Now, the sales provision prohibits sale in terms, but then it allows retailers to sell tobacco, cigars, cigarettes and candy and soft drinks, ice cream, milk, bread, fruit, gasoline, oils and greases, it's all right to have people travel up and down on Sunday and not stay home and work, it also doesn't apply to apothecaries, and it doesn't apply to newspapers and periodicals. [fol. 35] In addition to that, finally, the bathing beaches and amusement parks sought an exemption for themselves, but they went further than that, Your Honor, and I'm not sure that Your Honor has completely understood the gist of our argument on this point, Section 521 on its face prohibits the sale of certain articles, we say, that on its face it is a discrimination in favor of what it permits to be sold, and a discrimination against what it refuses.

Court: Isn't this the same argument that applies so frequently to local option and the sale of intoxicating beverages and different license fees that prevail in different various sections of this county?

Mr. Sykes: No sir.

Court: Some sections tax cigarettes and others don't tax cigarettes and so forth and so on.

Mr. Sykes: No sir, 521 is a state wide statute on its face, and 521 as modified by 509 applies in Anne Arundel County and applies uniformly, geographically in Anne Arundel County.

Court: That wasn't done by Anne Arundel County, that was done by the state's general assembly.

Mr. Sykes: I know, but we have to ask ourselves—

Court: It's not like, for instance, you attempt to have baseball in Baltimore some years ago and the City Council passed an ordinance and allowed the playing of baseball and then it was found invalid. You have to figure the source from which this legislation comes.

Mr. Sykes: What I'm saying is this, Your Honor, this legislation comes while, it comes from the legislation it applies to Anne Arundel County, but you have to take the legislation as a whole, and you have to try to square it with the constitutional requirements for legislation. If the legislature, for example, had passed a law saying that every person in Anne Arundel County who has red hair is liable to immediate imprisonment for ten days, obviously, that kind of law can't stand because it's an arbitrary and [fo]. 36] capricious law on its face, it's not a reasonable classification. Now, look at what they have done here, and this is the important thing about this, Section 521 prohibits certain sales, Section 509 says, as far as Anne Arundel County is concerned the prohibition of these sales made by 521 has to be modified, and Section 492, 521 and 522 of this Article are repealed, in so far as—

Court: Now, in so far as what?

Mr. Sykes: In so far as they prohibit operating bathing beaches, that's not our case.

Court: What's the next thing?

Mr. Sykes: In so far as they prohibit amusement parks and dancing saloons, that's not our case. I can pass over the question of whether it's an arbitrary discrimination to permit a dancing saloon and not to permit us to sell a cement trowel.

Court: Put a peg right there for a minute—in so far as

the niceties of these various situations are concerned, if you approach this from the violation of the Sunday law, what is there that strikes you more forceably than the fact that the Court of Appeals has said, that the sale of whiskey and beer on Sunday is valid, where would you get a more specific declaration as to what may be permitted on Sunday.

Mr. Sykes: What the Court of Appeals was saying was—

Court: Article 2B superseded.

Mr. Sykes: Yes, the sale of whiskey and beer was valid, but we now have the question, if the statute authorizes the sale of beer and whiskey, can it forbid the sale of a cement trowel on a reasonable basis?

Court: What you're trying to say to the Court is, is that the equity of the situation ought to be that if you can sell whiskey and beer on Sunday, why can't you sell some of these less harmful or less destructive, less demoralizing [fol. 37] items or articles, but this Court doesn't make the law, this Court doesn't legislate.

Mr. Sykes: But the Court enforces the prosecution, if Your Honor please, that the laws be reasonable and not arbitrary.

Court: Yes, but when we have a law that is, as far as we can determine, that presuntably is a valid law, until it's declared to be otherwise, and that's this Court's function.

Mr. Sykes: Your Honor is the Court and the question is before you.

Court: But the Court cannot determine what laws shall be enforced and what laws shall not be enforced, that's not the Court's province.

Mr. Sykes: Your Honor, may I say on that point, just this and then I will leave. This Court has no power, as Your Honor has said, to decide whether a statute passed within constitutional limits is wise or not, but becomes a point when a statute, as Your Honor mentioned in a discussion in the chambers, on its face makes distinctions which are ridiculous, and when that occurs the statute is arbitrary and passes the constitutional limits and the Court must strike it down because it sustains statutes passed and the exercise of the police power only when they

are not arbitrary and unreasonable, I can't say any more than that.

Court: Court didn't use the word arbitrary.

Mr. Sykes: Court used the word ridiculous.

Court: Ridiculous, that's right, and it commented on it right now. The Court's personal opinion sometimes is not what the law says it ought to be, Court's personal views sometimes are entirely different in what it has to decide, but that's no concern of ours, with what the Court's personal opinion is, it's what the law is, that's the thing we're concerned with, what is the law.

[fol. 38] Mr. Sykes: Well, the next point on this 509 which I wanted to make, Your Honor, was the continued reading, the respects in which Section 521 were repealed by this statute. The third respect is, that it's repealed in the case of the sale or selling at retail of any merchandise essential to or customarily sold or incidental to the operation of the aforementioned occupations. Now, that does not mean that the merchandise has to be sold at a bathing beach, it doesn't say that, it says, that the merchandise has to be of the kind of merchandise that is customarily sold at a bathing beach. Now, Your Honor may know about bathing beaches and about the fact that you can buy almost anything under the sun at some of these large amusement parks in Anne Arundel County. A person who is faced with the problem of what, if anything, he should sell on Sunday has Section 509 and Section 521 before him as if they're written as part of a single section. Section 521 says you can't sell on Sunday and names certain exceptions; and then there is a further exception repealing 521, which applies to articles customarily sold in all these various institutions, including dancing saloons and the Lord knows what. Now, the question is then, what does 521, as amended, repealed by 509 really prohibit, does anybody know sufficiently, with sufficient definiteness when he sells an article on Sunday that he is violating the sections of 521, when the statute itself has used almost impossibly vague standards, saying that oh, no, you don't violate this if you sell what's customarily sold at all of these things. What is the retailer suppose to do, go take the census of what's sold at all these things? Your Honor could take judicial notice that

there is a tremendous amount of material that's sold at these various institutions, and I say to you that the statute 509 has provided an exception as repealed, 521, to such a great and broad extent that when you construe the statute in its entirety it does not meet the requirements of reasonableness, certainty and definiteness that a criminal statute must meet, and therefore it is violative of the due process caused.

Court: The Court can say in response to it is simply this; if in these cases any sales were made as provided in [fol. 39] Section 509 that exception would apply, but as the Court understands it: these are not prosecutions under Section 509, but under Section 521, it doesn't say anything about a number of things that could be said. Now, you asked the Court the question how can you tell from Section 521 what ought to be sold, it says what can be sold, the Court didn't put those words into that act, the General Assembly in the State of Maryland set that up as Section 521 of Article 27, passed by the majority of the legislators of this state, whether wisely or unwisely, that's not for the Court to say. Counsel well knows that wisdom of legislature is not the Court's business, that's the business of the representatives of the people in the General Assembly.

Mr. Sykes: I hesitate to repeat myself, but as this case will undoubtedly wind its way up the judicial path, I want to make it perfectly clear in the record what my position on this is, so that there can be no misunderstanding. I am under the apprehension that Your Honor does not comprehend the test of our argument under 509, and for this reason and his reasons from the bench that 509 has nothing to do with this case because this is not a prosecution under 509.

Court: Court didn't say that at all. The Court says that the exception doesn't effect 521 in so far as 521's applicability to the charges in this case are concerned, that's what the Court is saying. Court knows that that is an exception, the Court knows what happened when that legislation was passed, so you can't say that Court doesn't know anything about it, maybe I can't comprehend it, but I understand it.

Mr. Sykes: Well, I misunderstood, I thought Your Honor said that if this were a prosecution under 509, it may be the 509 language would have significance.

Court: Court has a few more gray hairs than you do, Mr. Sykes, and knows a little bit more about the history.

Mr. Sykes: That's perfectly all right, sir, I just wanted to be sure.

[fol. 40] Court: I've lived sixty some years and I believe I know a little bit about this county.

Mr. Sykes: Well, those are the major points that we have to make, the other point which is also important I'll touch on just briefly, and that is the church and state problem. The Court of Appeals upheld the labor statute as a civil regulation, the Supreme Court hasn't passed on it in over a hundred years and this Court is bound by what the Court of Appeals says, that is for the time being. We make the point in order to preserve it for higher review; the point here, however, is that the rationale under which the earlier statute was upheld cannot be invoked today as a matter of civil law for the upholding of the crazy quilt pattern of statutes which is before the Court today. These statutes before the Court today do not uphold or promote any interest that society may have in the provision of a day of rest for the people of this state. If there were only the statutes that there had been in the first place a general statute, generally applicable to all work and labor in Anne Arundel County the Levering case would apply, but today with the pattern of statutes which permits you to spend your Sunday in a beer saloon or dancing saloon to buy anything you want to buy that's customarily sold at bathing beaches, picnic groves or amusement parks and the like, to go bowling, to indulge in all sorts of worldly recreation, and not even recreation, that pattern of statutes can be upheld on the basis that the legislature in its wisdom has provided reasonable means of sanctioning the public interest in a day of rest, and so taking all of these various points, with regard to the conflicts and contradictions and the ridiculousness of the statutes; those things go not only to the question of discrimination and arbitrariness and the like, but they go to the question of religious freedom because the statutes as they are today, as I say, do not or cannot be sustained on the same basis that the earlier general statute was sustained, and so we ask, if Your Honor please, on all these grounds that the motion to dismiss

the warrants be granted, and in order to keep the record clear we haven't had a ruling on any of our motions, we [fol. 41] would like to have leave to get this up the best way we can within a reasonable time and file a written motion nunc pro tunc, so as to comply with the rule requiring the motion being right.

Court: Court explained to counsel, at least commented to counsel in the chambers that it would have the privilege of filing as you're required by the rules all motions in writing that are necessary to be presented as have been done earlier in this case. In other words, motion for a postponement, motion for the prosecution be dismissed and motion for removal of the case, motion for prosecution not being filed in thirty days, and motion that the Sunday law violates the Maryland Constitution, and the motion to have the exhibits filed, which counsel will have to do and the Court has agreed to that, if there are no further arguments the Court will proceed to rule on the motions. As to the motion for postponement, the Court regrets very much that it had to take the position it did in denying the request of eminent counsel for a postponement, but because of what has previously occurred prior to present counsel's association with themselves in the case, up until noon of October the 27th, other counsel representing the same parties had been in contact and communication with the Court over a period of more than a week, and the Court had at least one week ago notified counsel at that time there would be no postponement of these cases today, as far back as October the 2nd. The record shows these parties knew that the machinery of the law and reference to the alleged violations thereof had begun to move, and that there was an attempt to enforce these laws, and that prosecutions were to fall accordingly. So that, the litigants themselves cannot complain to this Court that they have not had adequate time within which to make due, proper and full preparation of their defenses in these cases. And the Court knows, because it has talked with other counsel that they went from one lawyer to another and then finally to you gentlemen, who represents them today, primarily for the purpose of getting these cases postponed, not by counsel but by them as an objective, and the Court feels that it

[fol. 42] owes a duty, with due respect to the law, that such tactics should not be sanctioned or approved by the Court, consequently, much as it regrets to do it, it will have to overrule the motion for a postponement. As for the motion for the prosecution to be dismissed on the grounds presented, namely, upon warrant, where the case is tried upon warrant and not on information or indictment, the Court feels that, procedurally, as far as it's able to analyze the picture there's nothing wrong with the manner in which these cases have been processed, and therefore, that motion will be overruled. As for the motion for removal of the cases, the Court doesn't feel that there's been any undue notoriety or prejudice prevalent on the part of any newspaper items that may have appeared, which as far as the Court's been able to observe, any narration or news items of what has taken place in the county, and that motion will be overruled. The other motions, the Court feels, are not substantial from the Court's analysis of the situation, all motions will be overruled. Counsel may have an exception to the Court's ruling and file whatever papers they desire to file.

Mr. Sykes: I'd like to complete the record and make one more motion, I would like the record to show that the jury was sitting in the court room when the Court made the remarks it did coming from the Court's own knowledge, apparently, as to its reasons for granting the postponement, particularly, the Court's remarks about the tactics of the defendants individually, and the need for respect for the law and the like, and I would urge that the case be postponed on the further ground that the remarks made by the Court to this particular jury panel cannot help by having been prejudicial to the interest of these defendants.

Court: Motion is overruled.

Mr. Duvall: I understand from Mr. Mundy that each of the defendants elect a trial before the Court, and at this time I don't believe I made the motion earlier when these cases were called, the State at this time moves to consolidate these cases for the purpose of trial and ask [fol. 43] defense counsel that that motion be made as initially when I called the case, so that your motions which you have argued apply to all of them in a consolidated form.

Mr. Sykes: I would like the record to show too, if Your Honor pleases, that the election for a trial by the Court is not a completely free election, but was made because of the pressure in counsel's mind induced by the failure to grant the motion for removal, and by the failure to grant the motion for postponement based upon the remarks made to this jury. We do not mean by electing a court trial under these circumstances to waive those motions in any way, we merely try to do the best with what we have without acquiescence in any way.

Court: Court can ask you, gentlemen, how you want these cases tried, before the Court or Jury?

Mr. Mundy: May it please the Court, in view of Your Honor's refusing our motion to remove the cases, we feel obligated to accept a court trial.

Court: Let the record show then, in these various cases 4263, 4264, 4265, 4266, and 4267, and 4268, and 4270 election of court trials has been made by counsel. Does the Court understand, gentlemen, these cases are consolidated for trial by agreement?

Mr. Mundy: By agreement.

Court: Let the record show.

Mr. Duvall: May it please the Court, before proceeding with the first witness I wonder if I may speak with other counsel in the other cases to find out if this jury will be needed today?

ARRAIGNMENTS AND PLEAS

Court: Mary Margaret McGowan, stand up, Court will have the Clerk read the charge to you.

(Clerk read the warrant to the traverser.)

Clerk: How say ye, are you guilty or not guilty?

Mary Margaret McGowan: Not guilty.

[fol. 44] Court: How do you wish your case tried, court or jury?

Mary Margaret McGowan: Court.

Court: All right, you may be seated.

Clerk: Nina Lee Shiflett, stand and raise your right hand, please.

(Clerk read the warrant to the traverser.)

Clerk: How say ye, are you guilty or not guilty?

Nina Lee Shiflett: Not guilty.

Court: How do you wish your case tried, court or jury?

Nina Lee Shiflett: Court, on advice of counsel.

Clerk: Herbert Mayers, stand and raise your right hand.

(Clerk read the warrant to the traverser.)

Clerk: How say ye, are you guilty or not guilty?

Herbert Mayers: Not guilty.

Court: How do you wish your case tried, court or jury?

Herbert Mayers: By the Court on advice of counsel.

Clerk: Eugene Louis Hopper, stand and raise your right hand.

(Clerk read the warrant to the traverser.)

Clerk: How say ye, are you guilty or not guilty?

Eugene Louis Hopper: Not guilty.

Court: How do you wish your case tried, court or jury?

Eugene Louis Hopper: Court, on advice of counsel.

Clerk: Samuel Sheps, stand and raise your right hand.

(Clerk read the warrant to the traverser.)

Clerk: How say ye, are you guilty or not guilty?

[fol. 45] Samuel Sheps: Not guilty.

Court: How do you wish your case tried, court or jury?

Samuel Sheps: Court, on advice of counsel.

Clerk: Betty Ruth Sawyer, stand and raise your right hand, please.

(Clerk read the warrant to the traverser.)

Clerk: How say ye, are you guilty or not guilty?

Betty Ruth Sawyer: Not guilty.

Court: How do you wish your case tried, court or jury?

Betty Ruth Sawyer: Court.

Clerk: Dora Margaret Joswiak, stand and raise your right hand, please.

(Clerk read the warrant to the traverser.)

Clerk: How say ye, are you guilty or not guilty?

Dora Margaret Joswiak: Not guilty.

Court: How do you wish your case tried, court or jury?

Dora Margaret Joswiak: Court, on advice of counsel.

Mr. Mundy: May it please the Court, so that there will be no question pleas have been entered of not guilty on the advice of counsel for reasons as counsel stated to the Court, court trial on advice of counsel.

Court: Court will take a recess until 1:00 o'clock, all persons waiting trial return at that time.

(Recess.)

Mr. Mundy: Your Honor, may I respectfully move that all prosecution witnesses be excluded from the court room, that the witness who is testifying, of course, be present, and when he finishes testifying, he again be excluded inasmuch as he might be called in rebuttal?

Court: The same will be applicable to the defendants. [fol. 46] Mr. Mundy: Yes, Your Honor, not the defendants themselves, but our defense witnesses.

Court: That's right. All witnesses who are to testify for the State and all witnesses who are to testify for the defendants will retire from the court room and make themselves available for call when needed.

ASHLEY VICK, a witness, of lawful age being first duly sworn, deposes and says:

Mr. Duvall:

Q. Will you state your name and occupation, please?

A. Ashley Vick, a member of the Anne Arundel County Police Department.

Q. Sgt. Vick, were you on duty September 28th of this year?

A. I was, sir.

Q. What hours were you on duty on that date?

A: 8 a.m. to 4 p.m.

Q. And while you were on duty on September 28th, did you have occasion to be in the vicinity of Glen Burnie in this county?

A. Yes, sir.

Q. On that date did you have occasion to visit any mercantile establishments in this county?

A. Yes, sir.

Q. What establishments did you visit and approximately what time?

A. We went to Sanitary Food Market in Glen Burnie at approximately 11 a.m., from there we came to Carr's Corner at Routes 450 and 178 approximately 12, approximately noon, we came straight from Sanitary down there then we proceeded back to Glen Burnie and went to the Two Guys store in Glen Burnie.

Q. Where is this store located?

A. It's on Ritchie Highway.

Q. And what did you do when you went to the place you identified as Two Guys store?

[fol. 47] A. We went to the store, Corporal Kiessling and I went in the same car and we both got out of the car and went into the store; I went to the counter and picked up one three ring loose leaf binder and one can of Simoniz floor wax, I took it to a counter and was checked out by a subject later identified as Margaret Mary McGowan.

Q. Now, do you have that three ring loose leaf binder and that can of Simoniz in court today?

A. Yes, sir.

Q. Would you get it, please?

Mr. Duvall: At this time I offer in evidence the three ring loose leaf binder as State Exhibit No. 1, and the can of Simoniz Vinyl Floor Wax as State Exhibit No. 2; and the bag in which these articles were contained as State Exhibit No. 3.

Court: Admit them.

(Loose leaf binder marked State Exhibit 1.)

(Can of simoniz floor wax marked State Exhibit No. 2.)

(Bag marked State Exhibit No. 3.)

Mr. Duvall:

Q. What, if anything, did you pay for these articles, Sgt?

A. Sixty Nine Cents for the loose leaf binder, seventy cents for the can of Simoniz floor wax, and there was three cents tax, or a total of One Dollar and Forty Two Cents.

Q. And where you paid for these articles were there any other persons or person at the check out counter other than the person you identified as Mary Margaret McGowan?

A. Yes; there was a lady later identified as Dora Margaret Joswiak, 305 Furnace Branch Road, Glen Burnie.

Q. And what, if anything, did Dora Margaret Joswiak do?

A. She bagged the articles.

Q. After you had purchased them?

A. Yes, sir.

Q. Did you have any conversation with either of these persons, Sergeant?

A. Not prior to the purchase.

[fol. 48] Q. Now, at the time you went in this store were you the only customer there?

A. No sir.

Q. Would you describe, generally, the premises to the Court?

A. It's a very large store, it's laid off in sections, you have a shoe section, a dry good section, hardware section, domestic counter, and have a checker for each area.

Q. And in which section did you obtain the items which have been offered in evidence?

A. I don't know what the name of this section was, it didn't have any right where I purchased, but it was where you could get school supplies, mops and things of that nature.

Mr. Duvall: Witness with you.

Cross examination.

By Mr. Mundy:

Q. Sergeant, I have just one or two questions; the first store you visited was the Sanitary Store?

A. Sanitary Food Market off Ritchie Highway in Brooklyn Park.

Q. Did you make any purchases there?

Mr. Duvall: Objection, I don't think it's relevant for the purpose of this case, what may have been done or not been done other than this location.

Mr. Sykes: It's offered in our point of discriminatory courses.

Court: Court will overrule the objection.

Witness: No sir, we were turned down at the Sanitary Food Market, being quite sure that we had been recognized as being police officers. A sale was made later on in the day at Sanitary Food Market by another police officer.

Mr. Mundy:

Q. What was purchased at that Sanitary Market later in the day?

A. I don't know, sir.

[fol. 49] Q. Then you visited a second store, I understood you to say, some of these names are unfamiliar to me, Carr's Corner?

A. Yes, sir, we came to Carr's Corner.

Q. That's a store?

A. That's a grocery store, yes sir.

Q. And you arrived there about noon, did you make any purchases at that store?

Mr. Duvall: Objection.

Court: Overruled.

Witness: We were refused a purchase at Carr's Corner.

Mr. Mundy:

Q. The store was open?

A. Yes sir.

Q. It was a grocery store, you say?

A. Yes sir.

Q. What did you attempt to purchase?

A. A can of coffee.

Q. What reason was assigned for refusal?

Mr. Duvall: Object to that.

Court: Sustained.

Mr. Mundy:

Q. When did you make your first Sunday arrest, Sergeant?

A. On September 28th, 1958.

Q. Had you made any Sunday arrest prior to that?

Mr. Duvall: Objection.

Court: Overruled.

Witness: Not of this nature, sir.

Mr. Mundy:

Q. Did you make any purchases on Sunday prior to September 28th?

Mr. Duvall: Object again for the record.

Court: Overruled.

[fol. 50] Witness: Would you repeat that question?

Mr. Mundy:

Q. Did you make any Sunday purchases prior to September 28th?

Court: I think the State is probably right. Court will have to sustain the objection, that question is so broad, you're trying to get at the purchase in violation of the law, purchase legal items then you wouldn't have any interest for any of them.

Mr. Mundy: I quite agree with Your Honor, I think it was very poor judgment.

Q. Did you make any Sunday purchases prior to September 28th of articles that are prohibited from Sunday selling?

Mr. Duvall: Objection, calls for a conclusion of the witness.

Court: Sustained.

Mr. Mundy:

Q. When did you first attempt to, personally, to enforce the Sunday selling law?

Mr. Duvall: Objection.

Court: Sustained.

Mr. Mundy:

Q: What purchase did you make on Sunday prior to September 28th?

Mr. Duvall: Objection, that's the previous question rephrased, too broad.

Court: Sustain the objection.

Mr. Mundy:

Q: What instructions did you receive from your superior officer as to making purchases on Sunday prior to September 28?

[fel. 51] Mr. Duvall: Objection.

Court: Overruled, we'll let him answer it, Court can't see where this line of questioning has anything to do with it, but it doesn't want to shut off anything that may be relevant, it isn't a question of instructions in this case at all.

Witness: September the 28th is the first day that I attempted to enforce this particular law, sir.

Mr. Duvall: Move to strike that answer, it's not being responsive to the question.

Court: Strike it out.

Witness: May I ask the gentleman to repeat the question?

Mr. Mundy:

Q: In the line of official duty, did you make any Sunday purchases prior to September 28th?

Mr. Duvall: Objection.

Court: Let him answer it. As long as this is before the Court, the Court in it's own mind, whether there's an objection or not is going to toss out the irrelevancy and stick to the relevancy in this case, you gentlemen might just as well know it, whether I sustain or overrule, go ahead answer it.

Witness: No sir.

Mr. Mundy:

Q. Did you make any Sunday purchases after September 28th?

Mr. Duvall: Object for the same reason.

Court: Overruled.

Witness: Yes sir.

Mr. Mundy:

Q. On how many Sundays?

Mr. Duvall: Object again.

[fol. 52] Court: Overruled.

Witness: On the following Sunday, sir.

Mr. Mundy:

Q. And is that the only Sunday aside from September 28th?

A. Yes sir.

Court: That wouldn't be prior to September 28th, that would be after.

Mr. Mundy: I said aside from September 28th.

Court: Aside?

Mr. Mundy: Yes sir.

Q. Now, I don't ask you where you made those later purchases, but what articles did you purchase?

Mr. Duvall: Object.

Court: I don't know what relevancy that has, if he bought them in a hundred places here or bought them in only one, the number of places don't shed any light on this situation, I'll sustain the objection.

Mr. Mundy:

Q. Did Corporal Kiessling go into the Two Guys Store with you on September 28th?

A. Yes sir.

Q. You took from the racks, I presume, the binder and the floor wax; is that correct, Sgt.?

A. Yes, it is, sir.

Q. And after you took those articles where did you go?

A. To the check-out counter.

Q. And you said you paid sixty-nine cents for the binder and seventy for the floor wax?

A. Yes sir.

Q. And the total was how much?

A. One Dollar and Forty Two Cents (\$1.42), including three cents tax.

Q. Whom did you pay the money to?

A. Mary Margaret McGowan.

[fol. 53] Q. And Miss or Mrs. Joswiak merely put those two items in a bag, is that correct?

A. Yes.

Q. After you had paid the money to Miss McGowan?

A. Yes sir.

Q. When you received your instructions as to the enforcement of the Sunday law, were you instructed as to the items you were to purchase?

A. No sir.

Q. That was left to your judgment, was it?

A. Yes sir.

Q. How did you happen to select the floor wax and the binder?

A. I picked those articles because I didn't think they came within the things that could be sold legally on Sunday.

Q. Were you considering when you reached that conclusion the things that might be sold at beaches?

Mr. Duvall: I'll object to this line of questioning again, sir, he has posed to the witness a possible legal question.

Court: Court will sustain the objection.

Mr. Mundy:

Q. When did the Anne Arundel County Police Department start to enforce the Sunday law?

Mr. Duvall: Objection.

Court: Sustained.

Mr. Mundy: Your Honor, so that you'll have my reasoning, I'm trying to show a lack of uniformity in enforcement, I don't press the question, Your Honor has ruled and I abide by the rules.

Q. Sgt. can you identify Miss McGowan in the court room today?

A. Yes sir, the lady on the left.

Q. Can you identify Miss Joswiak?

A. Yes sir.

Q. Which one is she?

A. The lady on the other end in the pink coat.

[fol. 54] By Mr. Duvall:

Q. Is Corporal Kiessling in the court room today?

A. No sir.

Q. Do you know his present whereabouts?

A. No sir, he's on vacation.

Q. You know he is on leave from the department?

A. Yes sir.

Mr. Duvall: Thank you, Sgt.

MAXWELL FRYE, a witness of lawful age, being first duly sworn, deposes and says:

Direct examination.

By Mr. Duvall:

Q. Will you state your name and occupation, please?

A. Sgt. Maxwell Frye, Anne Arundel County Police Department Ferndale.

Q. Sgt., were you on duty September 28th, 1958?

A. I was.

Q. What day of the week was that?

A. Sunday.

Q. What hours were you on duty that date?

A. From 8 a.m. to 4 p.m.

Q. And while you were on duty September 28th, did you have occasion to go to any mercantile establishments in the vicinity of Glen Burnie in this county?

A. I did.

Q. What establishment did you go to Sgt.?

A. Two Guys Store, Glen Burnie.

Q. Where is it located?

A. Ritchie Highway just north of the center of the town of Glen Burnie.

Q. Approximately what time did you go to the store?

A. 1:30 p.m.

[fol. 55] Q. And what did you do upon arrival?

A. I went to the hardware section of the store and viewed the articles for sale there.

Q. And at that time did you make any purchases?

A. I did. I purchased a stapler and staples.

Q. Now, at the time you purchased this stapler and staples did you receive any assistance from any person at the store?

A. I did.

Q. From whom did you receive assistance?

A. From Mr. Hopper.

Mr. Mundy: May it please the Court, I move that the answers to the last questions be stricken out; the questions were leading and another vice of the questions is that assistance is rather a broad word.

Court: Court will sustain the objection, re-phrase the question.

Mr. Duvall:

Q. Tell the Court just what occurred when you obtained the stapler and the staples.

A. I entered the hardware section, looked over the materials and selected a stapler, nearby was a salesman that was someone connected with that section of the store and I asked him for assistance in locating staples for the stapling gun and showing me the other stapling guns. I selected the one that I later purchased, he got the staples for that stapling gun and I took the package, or rather he did, wrapped it and I went to the cashier and purchased it.

Q. Now, did that person identify himself to you?

A. He did after I made the purchase.

Q. And who was that person?

A. A Mr. Hopper.

Q. And at the time he identified himself to you did he make any statement whatsoever as to what his capacity was at this particular store?

A. No, he didn't, as well as I can recall, I asked him if he had worked there before I asked him to help me select the stapling gun and the staples.

Q. What, if anything, did he say in reply to that question?

A. He said he would assist me in my selection.

Mr. Mundy: What was the answer, Sgt., please? What was the question that you asked him?

A. I asked him if he worked there and he said he did, and he aided me in my selection.

Q. He did what?

A. He aided me in my selection.

Q. He made no answer to your question?

A. He aided me in my selection, he said he worked there.

Mr. Duvall:

Q. Do you have the stapler in court, Sgt.?

A. It is.

Q. Will you examine the contents of that envelope?

A. This is the stapling gun and staples that I purchased.

Mr. Duvall: May it please the Court, I offer at this time a stapling gun with a box of Swingline No. 401-5 staples with the container in which these objects are placed as State Exhibit No. 4.

Court: Admit it.

Mr. Duvall: I should also like to include in that as a single exhibit a bag in which this box was kept.

(Stapler and Staples marked State Exhibit No. 4.)

(Bag marked State Exhibit 5.)

Q. Now, Sgt., I hand you another object and ask you if you can identify that object?

A. Yes sir, that's the receipt for the purchase of the stapling gun and staples.

Mr. Duvall: I offer that in evidence as State Exhibit 6.

(Receipt marked State Exhibit No. 6.)

Q. Now, what, if anything, did you pay for the stapling gun and staples?

A. Four Dollars and Fifty Cents (\$4.50).

Q. After you obtained those items what did you do, that is, from where they were located in the store, what did you do?

A. Do you mean after they were purchased?

[fol. 57] Q. No, after you picked them up and you testified that a person, Mr. Hopper, did certain things then what did you do?

A. I paid for them at the cash register, paid the cashier for the articles.

Q. And who was that person?

A. A Mrs. Schiflett, Nina Lee Shiflett.

Q. Did you have any conversation with her at the time you made the check-out of these articles?

A. No, I didn't.

Q. Did you, after you checked out the articles have any conversation with her?

A. I did.

Q. What conversation did you have with Mrs. Shiflett?

A. She was advised I was with the police department and that she was being placed under arrest for violation of the blue laws.

Q. Did you make any inquiry, did you make any further inquiry of her?

A. I don't recall if I did, I asked her if the manager was in the hardware section, she advised he was.

Q. Did she identify that person?

A. She did.

Q. Who was that person?

A. Samuel Scheps.

Q. And where was he at the time you first saw him?

A. He was right there in the hardware section near the cash register.

Q. Did you have any conversation with this person who was pointed out to you by Mrs. Schiflett as being the manager, Samuel Scheps?

A. I did, I asked him if he were manager and he stated he

was, I advised him that he, also, was under arrest for violation of the blue laws.

Q. Now, after that step was taken did they consult with any other person there?

A. Not until after I had asked them who the overall manager was of Two Guys Store, and at that time they advised me who it was, and I went after him and I brought him down to that section.

Q. Who went after him?

A. I don't recall just which one went after him, but, someone from the hardware section went after him.

[fol. 58] Q. And was a person brought to where you were?

A. Yes, he came down to where I was.

Q. And who was that person?

A. Herbert Mayers.

Q. And did you have any conversation with this person who identified himself as Herbert Mayers?

A. I asked him if he was manager of the Two Guys and he stated he was at that time, and then I told him that he was under arrest also for violation of the blue laws.

Q. Did you have any further conversation with the defendant, Herbert Mayers?

A. He wanted a few minutes time to put money away or his affairs straightened at which he was permitted to do before being taken to police headquarters.

Q. Did you have any further conversation with the person identified as Samuel Schepps?

A. No sir.

Q. Did you have any further conversation with a person identified as Mrs. Nina Schifflett?

A. No sir, not that I know of.

Q. Did you have any further conversation with a defendant identified as Eugene Hopper?

A. No sir.

Q. Were you alone when you made or conducted this activity, Sgt.?

A. I was alone at the hardware section of the store, other officers were in various parts of the store.

Mr. Duvall: Witness with you.

Cross examination.

By Mr. Mundy:

Q. Sgt., were you in the court room when Sgt. Vick testified?

A. No sir.

Q. Have you made Sunday purchases in any other stores?

A. Yes sir.

Q. When did you make the first purchase?

Mr. Duvall: Object again for the record.

[fol. 59] Court: Overruled.

Witness: My first purchase was made on the same date earlier in the morning.

Mr. Mundy:

Q. Had you made any Sunday purchases prior to September 28th?

Mr. Duvall: Object to that.

Court: Overruled.

Witness: No sir.

Mr. Mundy:

Q. Did you make any purchases after September 28th on Sundays?

Mr. Duvall: Object.

Witness: Yes sir.

Mr. Mundy:

Q. At what store did you make your other purchases on September 28th?

Mr. Duvall: Objection.

Court: Repeat the question the Court didn't hear it.

Mr. Mundy:

Q. At what store did you make your other purchase on September 28th?

Mr. Duvall: The State objects.

Court: Overruled.

Witness: Sanitary Food Market, Ritchie Highway, Brooklyn; Sun Ray Drug Store, Ritchie Shopping Center at Church and Ritchie Highway, Brooklyn, that's all I can recall.

Mr. Mundy:

Q. What did you purchase at Sanitary?

[fol. 60] Mr. Duvall: Objection.

Court: I don't know what the purpose of this line of questioning is, I'll permit it.

Witness: Sanitary, I'll stand to be corrected, Corporal Disney made the purchase, I was present with him.

Mr. Mundy:

Q. You made no purchase at Sanitary?

A. No, he made the purchase, I was with him.

Q. What was that purchase?

A. A jar of coffee and a package of cigarettes.

Q. And did you say you made no other Sunday purchases after September 28th?

A. I have, yes sir.

Q. What articles did you purchase on other Sundays after September 28th?

Mr. Duvall: Object to that.

Court: Overruled.

Witness: I would have to check the reports, they're in another room to answer that.

Mr. Mundy:

Q. Now, when you made the purchases at Two Guys on September 28th, to whom did you pay the money?

A. Mrs. Schiflett.

Q. You said that it was Mr. Hopper that gave you assistance?

A. That's correct.

Q. You were asked by Mr. Duvall whether you ques-

tioned Mr. Hopper, and you said you asked him whether he was an employee there, is that correct?

A. I asked him if he was an employee there, yes.

Q. Did he say that he was an employee there?

A. Yes, he did, and he offered to help me in my selection.

Q. You answered that question twice by saying, not that he told you that he was an employee, but gave you assistance, I ask you, why did you answer the question twice in that manner?

Mr. Duvall: I'll object to that because I don't think Mr. Mundy has phrased his answer correctly to the questions that were asked.

Court: The only thing we can do is to have the reporter play back what was asked and what was answered, Court can't remember each thing that you say.

(Reporter reads back the questions and answers in question.)

Mr. Mundy:

Q. Sgt., in order which person did you see first, did you see Mr. Hopper?

A. That's correct.

Q. And was that before you paid the price of the article?

A. That's correct.

Q. And next was it Mrs. Schiflett?

A. That's correct.

Q. Was that also before you paid the purchase price?

A. I saw her immediately before and immediately after.

Q. And then the next was Mr. Schen?

A. That's correct.

Q. And was that before or after you paid the purchase price?

A. After.

Q. And Mr. Mayers also after you paid the purchase price?

A. That's correct.

Q. You made payment only to one person and that was Mrs. Schiflett?

A. That's correct.

Q. Was it Mrs. Schifflett who gave you the receipts, State Exhibit 6?

A. That's correct.

Q. And that receipt has marked on it "merchandise purchased under Article 509 Maryland Code"?

Mr. Duvall: Object to that, the receipt speaks for itself.

Mr. Mundy: It's, of course, in evidence, Your Honor, offered by the State.

[fol. 62] Court: Well, let the Court look at it.

Mr. Mundy:

Q. Did you have any conversation with Mrs. Schifflett about that receipt?

A. I don't recall, it seems to me at this time, at one time I was in the Two Guys I did question what they were putting on the back of the receipts; but I was there more than once and I don't recall whether it was that time or not.

Q. And what was that conversation?

Mr. Duvall: I'll object if the Sgt. can't fix it with regard to this particular person, Mrs. Schifflett.

Mr. Mundy: He said it might have been on this occasion, may it please the Court, and I think I have a right to pursue in cross-examination.

Court: Go ahead, cross-examine him.

Witness: I don't recall the entire conversation, I do recall asking what it was that was being stamped on the reverse side of the receipt, the reply, I can't recall or any further conversation.

Court: Court would like to know something right there. Look at that receipt, Officer. Do I understand that that printed material on there was not placed on there by you?

Witness: It is not, I didn't place it on there, no sir.

Court: Do you know who did place it on there?

Witness: Mrs. Schifflett stamped it on with a rubber stamp.

Court: All right.

Mr. Mundy:

Q. You can't recall the conversation?

A. I recall what I mentioned, the reply, I don't recall that.

Q. How long have you been on the Anne Arundel County Police force?

A. Seven years and ten months.

[fol. 63] Q. What was your occupation prior to police work?

A. I was a Sun paper route salesman.

Q. How did you happen to buy these particular items, Sgt.?

A. I went into the hardware section, I noticed that there were several items not on the list of those permitted to be sold, and I just happened to select gun at random.

Q. Was September 28th the first day that you were instructed to enforce the Sunday law?

Mr. Duvall: Objection.

Court: Overruled.

Witness: Yes, it was the first time I'd been instructed.

Mr. Mundy:

Q. Had there been any enforcement of the Sunday law prior to September 28th?

Mr. Duvall: Objection.

Court: Overruled.

Witness: I haven't done any myself.

Mr. Mundy:

Q. To your knowledge, had there been any enforcement of the Sunday law by the Anne Arundel County Police Force prior to September 28th?

Mr. Duvall: Object.

Court: Court is allowing this, but it's saying to you very frankly it doesn't see where it has any bearing on it as far as Court can see.

Witness: I can only answer back to January 1st, 1951, that I don't know of any.

Cross examination.

By Mr. Sykes:

Q. I'm sorry, I didn't quite understand your answer. You said January of 1951.

A. I can answer back that far, January 1st, 1951, I don't know of any.

[fol. 64] Q. No enforcement between January of 1951 and September 28th of 1958, to your knowledge?

A. Not to my knowledge, no.

Mr. Mundy:

Q. Did you mention a moment ago a list of articles that were permitted to be sold on Sunday, maybe I'm misquoting your testimony, if so I don't intend to?

A. Yes, those specified by the law, ice cream, cigarettes, newspapers.

Q. Now, who gave you that list, Sgt.?

A. We have copies of it at the police station.

Q. Do you have available a copy of that list or one of those list?

A. I don't have any here, it doesn't only list the articles, I think, it's more or less like it is in the book, I'm not too sure, maybe Mr. Duvall can answer that.

Q. Now, the list that you just referred to, when I first asked you the questions on how you selected these items you said you selected them from a list, am I correct in the way I quote your testimony?

A. No sir, I didn't say that.

Q. What did you say then?

A. I said I went into the hardware department and in that section I looked over several items and none of them were on the list of the things allowed to be sold.

Q. Now, what list did you have in mind when you made that answer, Sgt.?

A. The one in regard to ice cream, tobacco, cigarettes, newspapers.

Q. Sgt., have you a copy of that list available?

A. I don't have one here, but I can get one.

Q. At the police department?

A. Yes sir.

Q. Would you be kind enough if there is a recess to obtain a copy for us?

A. Yes sir, we can get one sent down.

Court: Court wants to ask, did that list whatever it may have contained, contain the articles that you bought?

Witness: No sir.

Court: All right.

Mr. Mundy: No other questions, may it please the Court.

[fol. 65] Redirect examination.

By Mr. Duvall:

Q. Sgt., the paper that you referred to as the list, was that itemization of specific articles or was that quotation a verbatim copy of a specific section of the code, namely, the section we're concerned with today?

Mr. Sykes: I object to this testimony about the list, he's going to produce it and then it will speak for itself.

Court: Well, he may have his memory refreshed if he made an inaccurate statement, I don't know whether he has the list or hasn't the list. I think the State has the right to try to pinpoint this to see whether or not he's referring to a list as listed in the statute which he saw or separate unrelated list. Objection overruled, proceed.

Witness: It's a copy of the items that could and are allowed to be sold, as well as, the penalties and so on, I think it's an exact copy of what's in the law, it's furnished to us, it's not just a list of certain items.

Mr. Duvall: I have no further questions.

RICHARD S. DISNEY, a witness of lawful age being first duly sworn, deposes and says:

Direct examination.

Mr. Duvall:

Q. Will you state your name and occupation, please?

A. Richard S. Disney, Corporal Detective, Anne Arundel County Police Department, stationed at Ferndale.

Q. Were you on duty September 28th of this year?

A. I was, sir.

Q. What day of the week was that?

A. That was Sunday.

[fol. 66] Q. And on that date did you have occasion to visit any mercantile establishments on or about the vicinity of Glen Burnie in this county?

A. I did, sir.

Q. What establishments did you visit, Corporal?

A. It was a store on Ritchie Highway, located in Glen Burnie, known as the Two Guys from Harrison.

Q. Approximately what time did you go to that store?

A. It was approximately 1:30 p.m.

Q. And what did you do when you arrived at the store?

A. I went into the toy department and picked up a toy submarine, and took it out to the cashier and received, I paid a Dollar and Forty Two Cents (\$1.42) for it, the price was a Dollar Thirty Nine Cents (\$1.39) plus three cents sales tax.

Q. And who was the person to whom you paid that money?

A. It was Miss Betty Ruth Sawyer, salesgirl.

Q. Now, I hand you a package and ask you to open it, Corporal, what is the object you've just handed me, Corporal?

A. It's a toy submarine, known as the U. S. S. Nautilus, 571.

Mr. Duvall: I offer this toy submarine, its package, its specific container, the bag in evidence as a single exhibit, State Exhibit 7.

(Toy Submarine, Box and Bag filed herewith marked State Exhibit No. 7.)

Court: Admit it.

Mr. Duvall:

Q. What is the object which I hand you now, Corporal?

A. This is the 1 sales slip, more or less a receipt.

Q. Where did you obtain that?

A. That was from the sales girl, Betty Ruth Sawyer.

Mr. Duvall: I offer that as State Exhibit 8.

Court: Admit it.

[fol. 67] (Receipt filed herewith marked State Exhibit 8.)

Mr. Duvall:

Q. Did you have any conversation with Miss Sawyer at the time you made this purchase or payment on this toy submarine?

A. After I made the purchase and I was about to leave I advised her that she just violated the Sunday Blue Law and that she was under arrest.

Mr. Duvall: Witness with you.

Cross examination.

Mr. Mundy:

Q. Did you place her under immediate arrest, Corporal?

A. Yes, she was taken, she walked out from behind her booth and went out into the hallway and waited in line for transportation to Ferndale.

Q. To the police station headquarters?

A. Yes, sir.

Q. The others were taken out also? You weren't present then when they were taken?

A. No sir.

Q. Did you have a warrant when you went in the store?

A. No sir.

Q. When did you get the warrant?

A: I never did get a warrant, that was obtained the next day, she was taken to the Ferndale Police Station where she was booked on the charge and placed at \$52.50.

Q. And the warrant was obtained on Monday?

A. Yes sir.

Q. Was that true in these other cases, the warrant was obtained the following day?

Mr. Duvall: If he knows.

Witness: I wouldn't know, sir, I wouldn't know that.

Mr. Mundy:

Q. How many officers went into the Two Guys on September 28th?

A. All I can account for is Sgt. Frye and myself, we [fol. 68] were working together, there were others there but I couldn't state.

Q. Did you know that Sgt. Vick went into the store on that day?

A. I saw him there.

Q. When you were there?

A. Yes sir.

Q. Did you know that Corporal Kiessling went in that store?

Q. Yes sir, I saw him there too.

Q. So you saw three then, is that correct; you saw Sgt. Vick, Sgt. Frye and Corporal Kiessling?

A. Yes sir.

Q. Did you four officers go into any other stores on that particular Sunday?

Mr. Duvall: Objection.

Court: I'll sustain it, if you ask him what he did, I think as to what the others did, no.

Mr. Mundy:

Q. Did you go into any other stores on September the 28th?

Mr. Duvall: Object to this and move to strike the answer on my previous objection, sir.

Court: Court overruled the objection.

Mr. Mundy:

Q. Would you answer, please, Corporal?

A. Yes sir, I did.

Q. Did you make any purchases in the other stores?

Mr. Duvall: Object to that.

Court: Overruled.

Witness: Yes sir, I did.

Mr. Mundy:

Q. Did you make arrest of the persons who sold you articles in the other stores?

[fol. 69] Mr. Duvall: Objection.

Court: Overruled.

Witness: Yes sir.

Mr. Mundy:

Q. Had you made any arrest for the violation of the Sunday law prior to September 28th?

Mr. Duvall: Object.

Court: Let him answer it.

Witness: What was that question again?

Mr. Mundy:

Q. Had you made any arrest for the violations of the Sunday law prior to September 28th?

A. No sir.

Q. Have you made any arrest since September 28?

Mr. Duvall: Objection.

Court: Overruled.

Witness: Yes sir.

Mr. Mundy:

Q. For violation of the Sunday laws?

A. Yes sir.

Q. How many Sundays after September 28th did you make arrest?

Mr. Duvall: Objection.

Court: Overruled.

Witness: Approximately two or three; could be three.

Mr. Mundy:

Q. Corporal, State's Exhibit 7 is, as you have stated, a toy submarine?

A. Yes sir.

Q. Have you ever seen children play with submarines of that type?

[fol. 70] Mr. Duvall: Objection.

Witness: No, sir.

Mr. Mundy:

Q. You never have? Have you ever been around beaches?

A. Yes sir.

Q. Have you ever seen a child play with a toy of that sort around the beach?

Mr. Duvall: Objection.

Court: Let him answer it, I don't know what he's getting at, anything to help it.

Mr. Mundy:

Q. Corporal, have you ever seen a child play with a toy of this sort around the beach?

A. Off-hand, I can't remember.

Court: They don't play with a nautilus; the nautilus has just come into being.

Mr. Mundy:

Q. Do you know whether toys of this sort are customarily sold around beaches?

Mr. Duvall: Objection.

Witness: I couldn't state to that, I've never purchased any.

Mr. Mundy:

Q. Have you ever seen toys of this sort sold around beaches?

Court: Well, the essence of this is whether this was sold at the beach or at an amusement park.

Mr. Mundy: I have in mind Section 509, it is not illegal to sell articles that are customarily sold at, or incidental to, the operation of the aforesaid occupations—

Court: Court regrets it has to disagree with you, and that's that.

[fol. 71] Mr. Mundy: Well, I'll, of course, abide by your ruling, then Your Honor has sustained an objection to my question?

Court: The Court has given you latitude to try to present anything that counsel feels is properly presentable to defend the charges that the defendants had charged against them by the state, as it feels in indicating in ruling on the motion; what occurs or what is permitted in Section 509 is one thing; what the charges are in Section 521 are another if the exception does not justify straining it whereas to make it come within the purview of exceptions of 521, that's the long and short of it.

Mr. Mundy: Then, Your Honor, I'm not going to follow this—

Court: You have a right to except to the Court ruling, you make it a record.

Mr. Mundy: In other words, as I understand the Court's ruling, which I very cheerfully abide by, I am not permitted to ask this witness whether an article such as State Exhibit 7 is customarily sold or is incidental to the operation of a bathing beach?

Court: For the simple reason that the charge here is not charged violating Section 509 of Article 27.

Mr. Mundy: Then I, of course, will follow the Court's ruling and ask no more questions along that line. That's all, thank you.

Mr. Duvall: I'd like to recall Sgt. Vick.

Court: Call Sgt. Vick.

ASHLEY VICK, recalled.

Q. Sgt. what day of the week was September 28th when you conducted the activities testified to in your statement before?

A. Sunday.

[fol. 72] Mr. Mundy:

Q. Sgt., may I ask you a question, you were the first witness who testified for the state, were you not?

A. Yes sir.

Q. When you finished your testimony did you leave the court room?

A. No sir.

Mr. Mundy: May it please the Court, I move for a mistrial on the ground that this witness, I'm sure not intentionally, did not follow the Court's instructions.

Court: The motion is overruled, I think perhaps on other occasions we have permitted some of the witnesses to remain in Court on both sides when they finished with their testimony, unless there's some particular request for it the Court doesn't make that binding on them all the way through the course of the trial; if the request is made that they be excluded entirely during the course of the trial then the Court would justifiably do it, if necessary to do it, do that, but that has happened here on occasion that a witness has gotten through and without anybody knowing anything about it has sat down here and just listened to what's going on.

Mr. Mundy: May I respectfully remind the Court, that when we made the motion to exclude the witnesses we specifically asked that they be excluded after they took the witness stand.

Court: Court never heard that.

Mr. Mundy: May I have the motion read, I may be mistaken.

Court: Court understood you to say that all the witnesses, first you said the witnesses for the state only,

that's what I believe you said, to be excluded from the court room.

Mr. Mundy: No, Your Honor, I believe I could be mistaken.

[fol. 73] Court: Court said it was also applicable to the defendant and they would also be excluded.

Mr. Mundy: Your Honor, may I have the motion read, I could be mistaken, that the motion specifically asked for the exclusion of the witnesses after the witness had testified, and I think I mentioned—

Court: If you can show what this witness has just testified has in any way prejudiced or jeopardized the defendant's rights the Court will be glad to entertain it, that's usually the basis for it that somebody has heard something and been able to correct his testimony and is now maybe making a mis-statement or trying to correct what he has testified to about before, you don't have that in this case, what's the use of kidding yourself.

Mr. Mundy: Your Honor, I make the motion because if I'm not mistaken I'm glad to be corrected from the record, but the witness has, unintentionally, I'm sure, violated the Court's instructions.

Court: Then that's a matter for the Court to determine whether or not he's violated.

Mr. Mundy: Counsel says he has.

Court: But the Court didn't feel that this thing was so all inclusive that it had to specifically point out, or if it had said so, each of these witnesses must remain out of this court room during the entire course of this trial unless called as a witness, then I'd think you'd be one hundred per cent correct. Court simply did this in a general way, these officers know from prior experience in this court the general tenure of that situation because they have been requested on prior occasions to retire from the court room, both witnesses for the defense and witnesses for the state, and have themselves available when called, that's been the practice here. In spite of that, the Court says, if Counsel can show to this Court whereby the rights of the defendants by the answers given to the limited questions asked here have jeopardized or prejudiced the

rights of the defendants in any way, the Court will grant you a new trial.

[fol. 74] Mr. Mundy: Your Honor, I'm not going to labor the point, I have just this brief comment, I believe, that I specifically included exclusion in my motion; secondly, I think under the rule we have the right to exclusion without showing that there might possibly be prejudiced, that's all I have to say.

Court: Anything further from the officer?

Mr. Duvall: The State has nothing further.

Court: Step down, go outside the court room, don't stay in here, they don't want you in here.

Mr. Mundy: Now, I do want to find out whether Sgt. Frye has been in the court room and Corporal Disney.

Court: Is Sgt. Frye in here and Corporal Disney in this court room?

Mr. Duvall: The State rests.

MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF

Mr. Mundy: May it please the Court, may we move in behalf of each defendant, individually, for a motion for a directed verdict on the ground that there has been no adequate evidence to justify defense putting on its case.

Court: Do you want to be heard?

Mr. Mundy: Not particularly, Your Honor.

Court: The motion is overruled. Proceed.

Mr. Mundy: May we ask if Captain Wade is in the court room, I think he was here this morning.

Court: Is Captain Wade here? Sheriff, see if Captain Wade is outside.

Mr. Mundy: In the meantime, may I ask Sgt. Frye to come in?

Court: Tell Sgt. Frye to come in, Sheriff. Captain Wade is here. Do you want Captain Wade, he's here?

Mr. Mundy: Yes, please. Captain, would you take the stand, please.

[fol. 75] WILBUR C. WADE, a witness of lawful age, being first duly sworn deposes and says:

Mr. Sykes:

Q. Would you state your name and address, please?

A. Wilbur C. Wade, Chief of Police, Anne Arundel County Police Department.

Q. How long have you been Chief of Police for Anne Arundel County, sir?

A. Four years.

Q. And prior to that time were you employed in the department?

A. Yes sir, I was.

Q. In what capacity?

A. Captain for four years, Lieutenant for eight years, Sergeant for two years, Patrolman for four years.

Q. That's a total of how many years in the Anne Arundel Police Department?

A. Around 27 years.

Q. Now, during your experience in connection with the Anne Arundel Police Department, can you tell me what was the pattern of enforcement, if any, of the so-called Sunday Blue Laws?

Mr. Duvall: Objection.

Court: Overruled, you can answer.

Witness: We only investigated complaints, we had some complaints last year, at that time we didn't make an arrest, we warned the people that were violating the law, to quit selling on Sunday.

Mr. Sykes:

Q. The first warning then, was given last year?

A. As far as I can recall, we warned two business places.

Q. To your knowledge, had there been violations of the Sunday laws, Blue Laws, during this period of time that we'd been talking about?

Mr. Duvall: Objection.

[fol. 76] Mr. Sykes:

Q. Other than those that you gave warnings of?

Mr. Duvall: Objection.

Court: Overruled.

Witness: Well, actually, I had never made a purchase myself, and as far as visiting different business places, I would be unable to testify under oath that the law was violated, although, certain business places were open, but I never went into any of these places.

Mr. Sykes:

Q. What can you state about the generality of the condition of having business places open on Sunday?

Mr. Duvall: Objection.

Mr. Sykes:

Q. During that period.

Mr. Duvall: Objection.

Court: Sustained.

Mr. Sykes:

Q. Can you state what sort of business establishments were open on Sunday during this period?

Mr. Duvall: Objection.

Court: Sustained.

Mr. Sykes:

Q. I understand from previous testimony that September 28th of this year was the first day on which instructions were given to members of the Anne Arundel County Police Department to attempt to enforce the Sunday Blue Laws, is that correct?

Mr. Duvall: Objection.

Court: Overruled, you can answer it.

[fol. 77] Witness: I wouldn't say instructions, I would say complaints, we received a number of complaints regarding the Two Guys from Harrison.

Mr. Sykes:

Q. And who were those complaints made by?

A. No. 1—

Mr. Duvall: Object to this.

Court: I don't think he has to tell anything about the source of information from which these things came, the complaints.

Mr. Sykes: I proffer to prove by the witness, if Your Honor please, that complaints came from certain business competitors.

Court: The essence of this isn't where complaints came, the essence of this is whether or not there's been any violations of a law, that's the long and the short of it. It doesn't make any difference whether it came by inspiration, declamation, oration, decimation or any other ation.

Mr. Sykes: I hope not dissipation. May I have a clear cut ruling?

Court: Sustained.

Mr. Sykes: And rejects the proffer?

Court: Yes.

Mr. Sykes:

Q. Now, Captain, what instructions did you give to the members of your department with regard to the enforcement of the Blue Laws on September 28th, after having received the complaints which you testified to?

Mr. Duvall: Objection.

Court: Overruled, you can answer, Officer.

Witness: After receiving the complaints the week following the opening of the Two Guys store, I had eight plain clothesmen report to headquarters on Sunday morning. I instructed these men to go out and make a survey of the [fol. 78] county and anyone that they found that was violating the Blue Law, to make a purchase and arrest the people immediately.

Mr. Sykes:

Q. How many arrests were made on that day?

A. I don't recall exactly, it was somewhere in the neighborhood of ten or eleven.

Q. That is ten or eleven total arrest or ten or eleven stores or institutions at which arrest were made?

A. I think it was about six business places near as I can recollect.

Q. And how many were made at the Two Guys from Harrison store?

A. I think there were seven.

Q. So a total of seven out of eleven or twelve arrests was made at the Two Guys from Harrison store?

A. That is correct.

Q. Now, after September 28th what instructions did you give to the department with regard to enforcement of the Sunday Blue Laws on subsequent Sundays?

Mr. Duvall: Objection.

Court: Overruled, you can answer it.

Witness: My instructions were the same, we certainly weren't picking on the Two Guys, we went out and arrested other people, I don't recall how many were arrested, but we did arrest other people, and from that time on, up to this present Sunday, there was two or three arrests each Sunday. Last Sunday there were a total of seven places, near as I can recall, that were brought in and charged with violating the Blue Laws:

Q. Are these subsequent arrests that have been made after September the 28th, arrests which were made on your own motion, or were they arrests which were the result of complaints?

Mr. Duvall: Objection.

[fol. 79] Court: Sustained, I don't think it makes any difference.

Mr. Sykes: Your witness.

Mr. Duvall: No questions.

Mr. Mundy: Call Sgt. Frye.

SGT. MAXWELL FRYE.

Q. Sgt., after you testified were you in the court room while Corporal Disney was testifying?

A. I was.

Mr. Duvall: Object on the basis that this is a leading question, this witness is called as Mr. Mundy's defense witness.

Court: Overruled, let him answer it, answer the question.

Witness: I was.

Mr. Mundy:

Q. Were you here during the entire time that he was testifying?

A. Yes sir, I was.

MOTION FOR MIS-TRIAL AND DENIAL THEREOF

Mr. Mundy: Well, I renew the motion for a mis-trial, Your Honor. I have no doubt it will be overruled.

Court: The only thing Court will say is, if counsel can show where the defense right has been jeopardized the Court will be glad to entertain it, in the absence of that it's going to overrule the motion.

Mr. Mundy:

Q. Possibly you haven't had an opportunity to get the list you referred to?

A. Yes, I have.

Q. You have it in your hand?

A. Yes sir.

Q. May we look at it? Sgt., this is the list that you referred to while you were testifying a moment ago?

A. That's correct.

Q. And it has, just for identification at the top the word Sunday?

A. That's correct.

[fol. 80] Q. And the end it has Article 27, Section 604?

A. That's correct.

Mr. Mundy: We offer that as Defense Exhibit.

(List marked Defendant's Exhibit A.)

Court: This is a copy of what, Article 27, Section 521, isn't it?

Mr. Mundy: Yes, it is, Your Honor.

Mr. Duvall: Do I understand, that the record now shows that this paper incorporates the language under the '51 Code section, which has now been re-numbered as 521? If the record doesn't show it I want to get the '51 Code to show it.

Court: That speaks for itself, and Court understands the charges are based on Section 521 of Article 27 as provided in the 1957 Code.

Mr. Duvall: That's right, but what the State is saying is, to avoid confusion in the record that's being made, can it be agreed that that paper is the language of what in the 1957 Code is Section 521.

Court: I just asked that question and they agreed with it, that this paper is the law which is now modified as Article 27, Section 521, I didn't understand there was any difference about that.

Mr. Mundy: We can't make the agreement because we haven't had an opportunity to verify it.

Court: It wouldn't make a bit of difference whether this man had listed a million and one things that said they could have been sold, if the law said he could sell them, fine; if the law says he couldn't sell them then no matter what you list it doesn't make any difference, that's the Court's job to determine in this case whether there has been a violation of the law, not what the officers have listed. If somebody says you can go out here and commit murder and you go ahead and do it, does that excuse you? These things are so obvious it's not necessary to take all our time for some of this.

[fol. 81] EUGENE LOUIS HOPPER, a witness of lawful age being first duly sworn, deposes and says:

Direct examination.

Mr. Hubbard:

Q. Will you state your full name and address, please?

A. Eugene Louis Hopper, 416 N Street, S.E., Glen Burnie, Maryland.

Q. Were you employed on Sunday, September 28th, 1938, at Two Guys Store?

A. Yes sir.

Q. In Anne Arundel County?

A. Yes sir.

Q. Now, have you heard Sgt. Frye's testimony in this case?

A. Yes sir.

Q. Did you hear Sgt. Frye testify that you had wrapped or put in a bag a certain purchase he made in the store?

Mr. Duvall: Objection, Sgt. Frye didn't testify to that.

Court: I don't think that's accurate, he didn't say Mr. Hopper put anything in a bag, he said, Mr. Hopper aided him in the selection of whatever article or merchandise it was, staples, I believe, and the stapler.

Mr. Hubbard:

Q. All right, would you tell us just what occurred between you and Sgt. Frye?

A. Well, I was in the store standing by the cash register when Mr. Frye came in, he went over and looked around, I didn't particularly pay any attention to him, and finally he came back to the cashier and, I believe, he asked the cashier something about the staple gun and she said, "that gentleman there will help you," so I went over and assisted him, showed him only where the objects were, I did not pick any of them up, I did not wrap them in a bag or anything of that sort that he said.

Q. Anything else you want to add?

A. No, nothing else I can add.

Mr. Hubbard: Your witness.

[fol. 82] Cross examination.

Mr. Duvall:

Q. How long had you been employed at the Glen Burnie store?

A. For approximately three weeks.

Q. And what was your capacity there?

A. Salesman.

Q. Who employed you?

A. Handscheps Industry.

Q. Is that a corporation?

A. That's right.

Q. And the individual who actually hired you was Samuel Scheps?

A. No sir, George.

Q. George Scheps?

A. Yes sir.

Q. And in what area of the store were you assigned to function as a salesman?

A. No particular area, only at the hardware department.

Q. The hardware department?

A. Yes sir.

Q. Well, as a matter of physical location that's restricted to that particular area of the overall store, is it not?

A. Yes, I didn't understand what you said until after.

Q. So you were employed as a salesman in the hardware department?

A. Yes sir.

Q. And was so employed on Sunday, the 28th?

A. Yes sir.

Q. Thank you, that's all.

Court: Is the Court to understand that you were in charge of the hardware department or just a salesman there?

Witness: I was not in charge of the hardware department at the present time, I was a salesman.

Court: You don't mean at the present time, you mean at that time.

Witness: At that time.

Court: Who was the manager?

[fol. 83] Witness: Samuel Scheps.

Court: Court has no further questions.

PAUL KICEY, a witness of lawful age, being first duly sworn, deposes and says:

Direct examination.

Mr. Sykes:

Q: Your name and address, please?

A. Paul Kicey, currently staying at the Doll Motel in Glen Burnie.

Q. Are you employed at the Two Guys from Harrison store in Anne Arundel County?

A. Yes, I am, as manager of the store.

Q. You are the manager?

A. That's right, sir.

Q. What is Mr. Mayer's position?

A. Mr. Mayers is in charge of the major appliance section of the store.

Q. Were you present at the store on the day that the arrests in this case occurred, September 28th, 1958?

A. Yes, I was.

Q. Can you tell me, tell the Court, what the store's official sales policy is with regard to Sunday sales, what instructions are given to the employees?

Mr. Duvall: Objection, on the basis of the—

Court: It doesn't make any difference what instructions were given, gentlemen, it's a question of what happened. Court will let him answer it, it's just making that statement ahead of time.

Witness: We attempted to sell all merchandise which was, in our mind, legal under the current laws, especially that Article 509.

Mr. Sykes:

Q. Is there any merchandise which you withheld on Sundays?

A. Yes.

[fol. 84] Mr. Duvall: Objection.

Court: Court is going to give him latitude to try to present whatever they feel was within the realm of their de-

fense, realize that the violation of a technicality, so it will give them some latitude; if it were not before the Court Court's ruling would be strictly, what Court feels would be strictly rules of evidence.

Mr. Duvall: They have indicated they may proceed to the judicial state government, I want the record to be—

Court: As Court has indicated it doesn't make any difference, but it will let him answer the question.

Witness: Well, several weeks back Mr. Herbert Hubshman and I, that's the president of Two Guys, went through the store and selected items which we thought would not be permissible under the Article 509, among the articles selected not to be sold were major appliances, cabinets, woman's coats with fur on them or fur coats, man's overcoats, top coats, men's suits, pets, pet supplies, costume jewelry, and that, I believe, is about all.

Mr. Sykes:

Q. What is the range of merchandise which is carried by the Two Guys from Harrison store, how would you characterize the store?

A. Well, not trying to use our slogan and everything under the sun, it covers just about everything you could possibly use in all walks of life, in the home or in businesses, operation of businesses.

Q. Now, these departments that contain merchandise, which was not to be sold on Sunday, how did you notify the public of that fact?

A. Well, we had very large signs painted specifying what articles were supposedly available for sale under Article 509, in fact, we had Articles 509 printed and distributed and posted very prominently in the store, and we also put up smaller signs showing which items were not available for sale, certain sections of the section wanted we would rope off, the entire section where the items were located.

[fol. 85] Q. Now, do you have any of those signs with you?

A. We have one that I put against the wall, it's one of the large ones which shows the wording of Article 509.

Q. Would you produce it?

Mr. Sykes: I offer that in evidence.

Mr. Duvall: The State will object.

Court: Hold it up so we can see it. All right, Court will admit it for what its worth.

(Sign-marked Defendants' Exhibit B.)

Mr. Sykes:

Q. Was that sign and the other signs that you talked about posted in the store on September 28th, 1958?

A. Yes, they were, they were posted and we had several of these large ones posted very prominently throughout the building, the smaller signs were posted so that they'd be no question what~~o~~ever as to whether or not the sections which we were not selling in could not be missed by the public.

Q. Did you have any conversation with any of the officers who were in the store?

A. None that I can recall.

Mr. Sykes: No further questions.

Cross examination:

Mr. Duvall:

Q. How long have you been manager of the Glen Burnie Store?

A. Since its opening.

Q. When?

A. September 18th.

Q. And what is your home address?

A. 54 Magnolia Avenue, Jersey City.

Q. And postal zone?

A. 6.

Q. Now, you had responsibility for the overall operation of this store?

A. That's right, sir.

[fol. 86] Q. From September 18th until and including September 28th?

A. That's right.

Q. And have you been manager of the store since September 28th without interruption?

A. Without interruption, such as the days that I'm not working?

Q. No, whenever you're working.

A. Whenever I'm working, yes sir.

Q. What is included in the major appliance section to which you made reference?

A. That would include refrigerators, washing machines, freezers, stoves, large phonographs, hi fi equipment.

Q. Now, physically, where is that section located with reference to the portion of the store where the stapling gun and staples were sold?

A. Well, those are at opposite ends of the building.

Q. That would be how far away?

A. Oh, roughly, a hundred and twenty five, hundred and fifty feet.

Q. Were you present in the store on Sunday, the 28th, about 1:30, between 1:30 and 2?

A. I believe I was.

Q. Who would be in overall charge of the store in your absence?

A. Well, it would be several persons designated, I, officially do not have an assistant, and several persons would be delegated depending upon the day off, circumstances.

Court: When did you first become familiar with Section 509 of Article 27?

Witness: Oh, frankly, I'm not sure; Your Honor, it was several weeks back.

Court: Before September the 28th?

Witness: It might have been, I, frankly, wouldn't remember.

Court: And you knew there were certain articles that were not saleable on Sunday, didn't you?

[fol. 87]. Witness: That's right, sir.

Court: You're saying to the Court that you made up the list which you decided could be sold on Sundays and which you thought could not be sold on Sundays?

Witness: Well, as a result of having 509 in front of us—

Court: I mean, what you're saying is, if you were interpreting Section 509 according to how you viewed the situation in order to determine whether or not you could sell these articles and couldn't sell those articles?

Witness: That's right, sir.

Court: All right.

Mr. Duvall: I have nothing further.

Redirect examination.

Mr. Sykes:

Q. When you say there are several people that are designated as managers, you mean, anyone at one time in your absence?

A. That's right, anyone person.

Q. Is Mr. Mayers sometimes designated as manager in your absence?

A. Oh, yes.

Q. You testified, I think, that you may have been familiar with 509 before the 28th of September, and then you said that the signs were up on the 28th of September, and I ask you to think back and indicate approximately when you first became aware of 509 and who made you aware of it?

A. Well, now, with being reminded of that fact about the signs being printed only the day before September 28th, now, I would realize it must have been within a period of a few days or maybe a couple of days prior to September 28th, that Article 509, as such, became familiar to me.

Q. Did you have any consultations with the, or did the manager have any consultations with any counsel that [fol. 88] was preparing their list in making up their merchandise policy?

Mr. Duvall: Objection.

Court: Overruled.

Witness: Well, that I frankly would not know, I presume there was.

Court: If you don't know, don't make any presumption, either you did or you didn't.

Witness: Well, actually, I do not know.

Mr. Sykes: That's all.

Mr. Sykes: I'd like to re-call Captain Wade for a moment.

Sheriff: Captain Wade has gone back to the station.

Mr. Mundy: Your Honor, may we make a proffer, I want to save as much time as possible, it might be in view of your indication that you would consider his testimony inadmissible, but I'd like to make a proffer for the record.

We'd like to prove that on Sunday, September 26th, some investigators—

Court: Wait just a minute now, I thought Sunday was the 28th.

Mr. Mundy: What did I say, September, I'm sorry, Your Honor, October.

Court: October 26th?

Mr. Mundy: That on October 26th, I beg your pardon.

Court: This past Sunday?

Mr. Mundy: This past Sunday. Investigators employed by Two Guys caused certain shopping to be made at many locations and made purchases of articles that come within the prohibition of the Sunday law. Now, in support of that proffer, not as items admissible per se, but just to detail the proffer I should like to put in affidavits of the [fol. 89] persons who made these purchases, as I say, I'm, of course, aware that the affidavits—

Court: You mean made purchases at other places?

Mr. Mundy: At other places, yes, Your Honor.

Court: Well, how would that relate to the charges here on September the 28th?

Mr. Mundy: Well, as I said, Your Honor, in view of your ruling I thought probably you would consider it inadmissible, but I just want to make the proffer.

Court: Court doesn't see where it has any relevancy in the case, from what it's heard over the radio, there's been some subjects under arrest, but there hasn't been any subsequent trials in some of these cases. They're all after the date here, September the 28th.

Mr. Mundy: Well, may I have the affidavits marked as part of the proffer, Your Honor?

Court: Yes, they may be called on as witnesses probably for subsequent prosecution too, so you want to be sure that we have all these names here and use them as witnesses, make this thing more pronounced than what it is now. See, this is a two head sword.

Mr. Duvall: May it please the Court, the person whose signature appears on these affidavits—

Court: Excuse the Court just a minute. Court understands now, procedurally, that the defendant has proffered a number of sworn statements with sales slips relative to purchases that have been made by certain persons assuming they are representatives of Two Guys from Harrison, is that correct?

Mr. Mundy: The purchases were made, I think, by employees of a detective agency, Your Honor, and they're in court prepared to testify to these purchases.

Court: As to sales or purchases made since September 28th?

[fol. 90] Mr. Mundy: Yes, Your Honor, my examination, they were all made on last Sunday.

Court: And you're offering those as testimony in behalf of the defendant?

Mr. Mundy: Yes, I proffer the testimony of the witnesses themselves, and the affidavit is merely to show what that testimony would be.

Court: Well, the Court overrules the admissibility of those various statements, sworn statements or affidavits or whatever they may be designated as, because the Court feels they're irrelevant to the issues in this case. You have a right to proffer them and the recorder will so note as to each of these statements that you wish to present.

Mr. Mundy: And also you would reject the viva voce testimony of the witnesses who made the purchases?

Court: Any witnesses who would be presented in order to testify as to the substance of those respective affidavits or sales or purchases, are in the same category. Court will sustain the objection to their testimony and you can proffer the fact that you were ready, willing and able to present them to testify.

Mr. Mundy: That's our case, may it please the Court.

Court: Court will hear you, gentlemen.

Mr. Hubbard: Renewed motion for a directed verdict.

Court: Overruled.

COURT'S REMARKS AND FINDING OF GUILT

Court: You have before us here a situation where on the statute books are certain laws including Section 521 of Article 27. There have been, we'll say in all fairness, an indifference of any definite effort strictly to enforce that law, but the Court is confronted with what is fundamental in cases of this kind, merely, the acquiescence in or by usage of them. There is a failure to enforce a law which [fol. 91] is on the statute books, and which when brought to the attention of those who may or may not have violated it and the enforcement of the authority is a valid law, and an effort made to enforce it. Court cannot say that because you have not in strict enforcement of that law, whether by habit or custom or whatever way we have gotten used to doing this, that and the other thing in our mode of living, that when the issue is presented the Court can't say to the citizens of the county we won't enforce that law, but we'll enforce another, we don't think that law ought to be enforced. Court hasn't the authority to do that, it cannot ignore what the law provides, whether it be a popular law or an unpopular law, if it is the law. In this case, Court has read Section 521 and re-read it, it has tried to find some other law that would perhaps put a different interpretation on it from what the first impression was, but it has been unable to find anything to support the position of the defendants in this case, based on the evidence presented. We're living in a complex age, things are moving at a rapid pace. In certain sections of our state and certain sections of the country you have still a puritanical approach to certain things that go on on Sunday; in other sections you have a more liberal approach, you might say, in the vernacular, this is an unpopular law, enforcing this law this way, we don't think it ought to be the law and you can criticize it in more ways than one. One comment of which we were all cognizance was mentioned this morning, that it seems to be ridiculous that you can buy beer and whiskey on Sunday and yet, unfortunately, if you had to attend a wedding or a reception or a dinner and opened up your bureau drawer and found out you didn't have an undershirt because maybe some mice had gotten in there and eaten up the last one you had and you had to run

around the corner and get one so you'd be dressed for the party or occasion, why, that's against the law now, and the Almighty is going to send you to eternal damnation because you go out and buy an undershirt under all the conditions. You see, habits of people have changed, what we call Blue Laws are perhaps in the estimation of some somewhat antiquated, they don't fit in with modern conditions, and maybe we don't agree with what those laws say today, but this is the wrong forum in which to get the change. That must come based on the will of the people which our democratic processes provides as to what is best for the majority of our people. If the will of the people of this county is that the doors be nailed tight and sealed against any sales of any kind on Sunday, if that's the desire of the people of this county they have a perfect right to register it through their legal representatives, legislative representatives in the halls of the General Assembly and have enacted into law in keeping with the democratic process, what is best for the people of our county.

If on the contrary they don't want the old approach to it, hell fire and brimstone added too as used to be in years gone by; want a more reasonable approach based on modification of the law, if such is desired, then they have a perfect right in that respect to ask their representatives in the General Assembly to enact laws in keeping with what the majority of our people feel is for their best interest. No matter what kind of law you enact in this respect, this issue, it will not be satisfactory in everything concerned, but no law, generally speaking, meets with the approval of everybody, and the most important one the Court can think of is the income tax law.

In this case you have a statute that says expressly what you may be able to sell on Sunday, it enumerates those articles and there is very little room for interpretation, newspapers, plain words, periodicals cover a number of magazines, and things of that kind, tobacco, cigars, cigarettes, candies, nuts, ice cream, soft drinks, sodas and things of that kind are all set forth there. Those are the things which the law says are legal to sell on Sunday; it doesn't say you can sell a trowel on Sunday, it doesn't say you can sell a can of coffee on Sunday, it doesn't say you

can sell a stapler or staples on Sunday, there's no room for stretching it to include that, no term used there that would include these items that these warrants relate to. The Court in interpreting that section has conceived what that law means, and the meaning and the words of the [fol. 93] statute, and the words in this case it can't find anything to justify the violations which these warrants say have been done, the items are enumerated.

Simoniz floor wax, for instance, now, you say what harm is there in selling that on Sunday, whose going to be hurt by it, but that isn't the question, it isn't a question of what's good and what bad is done by the violations charged here, it is simply a charge brought by the State through its proper officials in the enforcement of a statute which may or may not be a popular law in Anne Arundel County. It is manifest from the attendance here today, and from a number of things that have been said, that there is some desire for a change whether it be for the better or for the worse, depending on whether you're a strict constructionist or whether you're modest in your approach to this problem.

Court has the unpleasant duty in this case of having to place persons, who, the Court feels, despite these charges are in the category of respectable citizens in our county, and that they are the victims of an enforcement of the law which has heretofore been lightly regarded, more or less indifferently concerned with, and has not strictly been enforced. And if you'll read that section, as I'm sure you've done, it has in its provision as a penalty a latitude of punishment because of this very kind of situation, namely, acquiescence in a course of conduct in the mode of living and then suddenly something happens which requires an enforcement of the law. And when the law is enforced then those who are unfortunately caught in that strict enforcement become the victims of a penalty provided in the statute. The first offense is a mild offense, but as the offenses are repeated therein lies the difficulty because the second offense provides not simply the penalty in so far as payment of a fine is concerned, but confinement in jail of ten to thirty days, the maximum fine of Five Hundred Dollars (\$500.00) plus the all important thing that the Judge has a right to declare the license null and

void, and then when you step it up to a repetition of it the offense begins to double after the second offense, the loss of license for twelve months after the second offense, two years after that, so you see the drafters of that law had in [fol. 94] mind at that time kindness, if you want to call it that, in the first offense, but a stricter enforcement once you have become the victim of violating that law, and that's unfortunately the position in which these parties find themselves today. The Court can well understand why you want to postpone this case, if they're never tried you never have a first offense from which to start from that time on, but after the first offense is when this thing gets to be serious and that's why the Court says in all fairness to every person here, if this law is not desired and the wishes of our county, then let them take the initiative and demand that a law be drafted and enacted in keeping with the wishes of the majority of the people of our county in accordance with our democratic way of life. If they desire, the people of this county, Court has said, feel that they don't want to sell any merchandise on Sunday, that it should be strictly a Blue Law county, no more no less, then the people have a right to go to the members of the legislature, both the State Senate and House of Representatives, House of Delegates, and ask, insist upon that there be a strict Sunday enforcement, no sales of beer, whiskey, newspapers, magazines, tobacco, cigars, cigarettes, gasoline, greases, oil, none of that.

On the other hand, because of our so-called advance in civilization people in this day and time find out that we have an integrated society, people work on Sundays now by virtue of the economic pressure who never thought of working in years gone by and it's necessary to do this, that or the other thing to make a livelihood, but sometimes what you do on Sunday in so far as trying to make a living and make a success of his life, that day stands between your success and failure, if the pressure is such that meets the present needs and it is necessary that a man discharge his religious obligation in the morning on Sunday and is free to recreate as he desires whether it's football, baseball, skating, swimming or whatever recreation it may be, or buying garden trowel because he likes to garden and the

only one he has to do it is Sunday afternoon, if that's the will of the majority of the people then have the law to support them.

[fol. 95] It's a sad duty of this Court to perform, to say that it has to place these unfortunate people by virtue of this law as it now exists in the category of those who have committed a misdemeanor, enter a finding of guilty as to each traverser.

Any reason why the Court shouldn't pass sentence?

Mr. Mundy: Your Honor, no, we are prepared.

Court: Will the various ladies and gentlemen please stand up?

Court: This is a rather painful duty that the Court has to perform, and want to say that to you ladies and gentlemen, because it doesn't feel that you are criminals in the sense in which we live with it here week in and week out. You've been the unfortunate victims of what the Court feels is an over zealous attitude in trying to go out here and do business without discretion, based on the existing law, but you, unfortunately, have been party to this perhaps because you've been required to earn a livelihood, nothing more, nothing less, not that you desired or intended to wilfully violate the law, and it's because of that that Court is doing with this thing what it feels or hopes is a kindly disposition of it.

No. 4263, that's Margaret Mary McGowan, the judgment and sentence of the Court is, you pay a fine of Five Dollars (\$5.00) and cost, and be confined to the County Jail until fine and cost are paid. The same fine as to each of the other traversers.

Now, let me say, finally, that the mere fact that the Court has made what it feels is a nominal fine is only conclusive as to this first offense. The Court is frank to state, as to each and everyone of you, if there is a second offense brought into this Court and tried, whether it be before the Court or the Jury, and there is a conviction the Court will then feel bound as long as this lies on the statute books to give you the maximum penalty.

Mr. Mundy: I have just one thing I'd like to call your Honor's attention to.

[fol. 96] Court: What is it?

Mr. Mundy: First of all, so it doesn't slip my mind, may I thank you for your courtesy you've extended during the course of the trial.

Court: Well, I don't know whether the Court has been as courteous as it would like to be, it's got its hands tied to a certain extent.

Mr. Mundy: As to the payment of the fine, there's no inclination not to pay the fine, but there's some little doubt in our mind as to whether the payment of the fine might prejudice our right to appeal.

Court: I don't think it has anything to do with the case on appeal whether you pay your fine or not, if you don't pay the fine Court will have to enact some security for the payment of your fine and perhaps the covering of costs and incidental items.

Mr. Mundy: That would be maybe a bond or some cash?

Court: That's right. If counsel wishes to discuss it among yourselves before you say whether or not you'll pay the fine, why, we're not going to put the sheriff on these people and hound them or anything of that kind, they're just simply standing by waiting for your advice in the matter.

Mr. Mundy: Thank you very much, Your Honor.

[fol. 94]

IN THE COURT OF APPEALS OF THE STATE OF MARYLAND

OPINION—May 14, 1959

Seven persons, convicted of making sales of merchandise forbidden on Sunday in Anne Arundel County, argue in their appeal that the trial court committed reversible error (1) in refusing to remove or postpone their trials; (2) in denying motions to dismiss the prosecutions based on the claims the Sunday Blue Law is unconstitutional (a) as violating the right of religious freedom guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, (b) as discriminating arbitrarily in favor of certain sales and against others, and (c) as being vague and indefinite, all contrary to the Fourteenth Amendment and Articles 19 and 23 of the Maryland Declaration of

Rights; and (3) in refusing to direct verdicts as to some of the accuseds after the evidence was in.

Code (1957) Art. 27, deals with "Sabbath Breaking" in Sections 492 and 534. Section 492 prohibits "bodily labor" on Sunday throughout the State, "works of necessity and charity always excepted," as well as any "unlawful pastime or recreation." Section 521 prohibits throughout the State the sale, barter or gift on Sunday of any merchandise except tobacco, cigars, cigarettes, candy, sodas and soft drinks, ice cream, and other confectionery, milk, bread, fruits, gasoline, oil and greases, drugs, medicines and patent medicine [fol. 95], cines, and newspapers and periodicals. Section 522, also State-wide in operation, makes it unlawful to keep open or use on Sunday any "dancing saloon, opera house, tenpin alley, barber saloon or ball alley." Section 509 repeals pro tanto Sections 492, 521 and 522 in Anne Arundel County insofar as they prohibit there the operating of, or working at, any "bathing beach, bathhouse, amusement park, dancing saloon", and permits in the County on Sunday the "sale or selling of any novelties, souvenirs, accessories, or other merchandise essential to, or customarily sold at, or incidental to, the operation of the aforesaid occupations and businesses, at retail, picnic groves, amusements, games, amusement rides; amusement devices, entertainments, shows . . ."

For some time before September 1958 the Sunday laws had not been enforced regularly or vigorously in Anne Arundel County. Then, because of complaints that a newly opened branch of an interstate chain of stores was flouting the law to a degree exceeding that considered reasonable by competitors, the Anne Arundel County police began and continued an extensive and non-discriminatory crackdown on forbidden Sunday sales. The appellants, all employees of the new store, were arrested for, and charged with, selling merchandise on Sunday in violation of Section 521.

Counsel for appellants, retained the day before the trial, asked Judge Michaelson in chambers on the morning of the trial for a postponement or removal of the trial. They [fol. 96] were told the motions would not be granted but that they would have to be made and denied in open court. Then, in the courtroom in which the jury panel was seated,

appellants requested removal of their trials from the Circuit because "there has been considerable agitation concerning these so-called Sunday Laws in this County", said they did not have the necessary affidavits prepared, and asked for a ruling on the motion as if the formalities had been complied with, and leave to file the motion and supporting newspaper clippings to show the prevailing sentiment of the community. Leave was granted for the late filing of the motion and supporting data, and the removal was denied. The motion to postpone the case because of the late employment of counsel also was denied. As to this the court said that some twenty-six days earlier he had told counsel then representing appellants that there would be no postponement and that the litigants could not now complain fairly of lack of time to make full and proper defense. The court went on to say that, from what he had been told by prior counsel for appellants, the litigants "went from one lawyer to another and then finally to you gentlemen, who represent them today, primarily for the purpose of getting these cases postponed . . . and . . . that such tactics should not be sanctioned or approved by the Court, consequently, much as it regrets to do it, it will have to overrule the motion for a postponement."

The appellants say it was an abuse of discretion for the trial judge not to grant either the motion for removal or [fol. 97] the motion for postponement because, after he made the remarks he did in the presence of the prospective jurors, who were seated in the courtroom, they had to take a court trial or be tried by a prejudiced jury. We find no prejudicial error. It would appear from the record that the court had told counsel in chambers that he would deny both the removal and the postponement and that counsel, before they entered the courtroom, had decided to have the cases tried by the court because of the refusal to remove the case, not because of the refusal to postpone the trials, and not because of the court's remarks in the presence of the jury.

A new panel of jurors was not requested, which could have been done if a jury trial had been wanted, because of what had been said by the court. In any event, the remarks of the court as to the reasons for refusing a postponement cannot reasonably be expected to have had the effect the appellants

seek to give them. They were no more than revelations of knowledge the judge had obtained officially from agents of the appellants during the progress of the case, and there is no reason to suppose that a jury chosen from the panel seated in the courtroom would have been influenced as to the guilt or innocence of the appellants by hearing the judge temperately say that they had attempted to postpone their trials.

There is no indication in the record that community sentiment was aroused or adverse to Sunday sales or the appellants. If anything, the newspaper accounts of the new [fol. 98] police enforcement of the Sunday laws were more sympathetic to the position of appellants than otherwise.

It is settled that refusal to remove a non-capital criminal case is not subject to review by this Court except upon a showing of abuse of discretion. *Piracci v. State*, 207 Md. 499, 508-509. We find no such abuse in Judge Michaelson's refusal to remove or postpone the case.

The appellants' argument that the Sunday Blue Laws are unconstitutional as violating the right of religious freedom has been answered many times by this and other courts, which have held that the basic purpose of such statutes, with their exceptions, is the civil establishment and regulation of a day of rest from work, not a law respecting the establishment of religion or prohibiting the free exercise thereof, and that the statutes do not offend the First and Fourteenth Amendments to the Constitution of the United States. *Judefind v. State*, 78 Md. 510; *Levering v. Park Commissioners*, 134 Md. 48; *People v. Friedman* (N.Y.), 96 N. E. 2d 184, 186, and cases cited therein (appeal dismissed for want of a substantial federal question, 341 U.S. 907). We have been shown no reason why we should depart from these holdings.

The argument of unconstitutionality on the ground of discrimination likewise has been answered before by the cases. The legislative plan is plain. It is to compel a day of rest from work, permitting only activities which are [fol. 99] necessary or recreational. There can be, and often are, sharp differences of opinion as to what is necessary

and what is proper or preferred recreation, but the answers must be given by the legislature, and if they are not clearly arbitrary or oppressively discriminatory, the legislative choices must be sustained. In *Ness v. Baltimore*, 162 Md. 529, 538, Chief Judge Bond, in upholding the Baltimore City ordinance permitting specified amusements, games and sports on Sunday afternoons and permitting certain retail sales on Sunday, said for the Court (in reference to alleged discriminations in the statute): "But what is tolerable and what intolerable in Sunday observance seems to be a question which cannot be fully answered by a process of reason. It is to a large extent determined by the public conceptions of proper respect for the day, and these conceptions are the outcome of public sensibilities not based entirely upon any process of reasoning. Regulations to conform to the public conceptions can, perhaps, be less easily shaped by logical reason than almost any other governmental regulations. The constitutional prohibitions stand ready to prevent a clearly arbitrary and oppressive discrimination. . . . But the mere fact of inequality is not enough to invalidate a law, and the legislative body must be allowed a wide field of choice in determining what shall come within the class of permitted activities and what shall be excluded." See, too, *Brown v. State*, 177 Md. 321, and *People v. Friedman*, *supra*.

[fol. 100] Appellants say that the Anne Arundel exceptions to the state-wide law go beyond those sanctioned in the *Ness* case because they permit the operation of bathhouses, bathing beaches, amusement parks and related facilities, and the sale of articles customarily sold at, or incidental to the operation of, these facilities, as well as the sale of alcoholic beverages, and the operation of slot machines, pinball machines, and bingo games.

What is permitted all comes within the category of recreation, long recognized as a permissible Sunday activity. That we might think more appropriate or wholesome forms of recreation could have been chosen by the Legislature is of no moment, if those that were (presumably as reflecting the prevailing sentiment of the community), are not arbitrarily discriminatory or oppressive. We find the arguments of appellants on this point no more than the claim that the

statutes are unwise, and, if they are right, this of itself does not make the law invalid.

We come to the contention that the Anne Arundel County Sunday law is unconstitutionally vague because no merchant can know whether or not the article he sells on that day is a novelty, souvenir, accessory or piece of merchandise "essential to, or customarily sold at, or incidental to, the operation of" bathing beaches, bathhouses, amusement parks or dancing saloons. This argument is made on the premise that Sec. 509 broadens the exceptions of Sec. 521 throughout Anne Arundel County so that anything "customarily sold at" a bathing beach, bathhouse, amusement [fol. 101] park or dancing saloon can be sold on Sunday anywhere in the County. It may well be that the legislative intent in Sec. 509 was to permit the use and enjoyment by the public on Sunday of the specified places of recreation and to insure that enjoyment by allowing patrons to buy, on the spot, what they customarily could buy to use the facilities to the fullest. We need not decide whether sales were intended to be limited to the places of amusement specifically allowed to operate on Sunday. If we assume, as do the appellants, that the language of Sec. 509 is broad enough to permit sales anywhere in the County, we do not find Sec. 521, as so broadened by Sec. 509, unconstitutionally vague.

A criminal statute must be sufficiently explicit to enable a person of ordinary intelligence to ascertain with a fair degree of precision what it prohibits and what conduct on his part will render him liable to its penalties; or it will affront the constitutional guarantees of due process. But such a statute is not void for indefiniteness merely because it exacts the burden of rightly estimating a matter of degree, or because juries may differ in their judgments in cases brought under it on the same state of facts. *State v. Magaha*, 182 Md. 122, 125. See also *Ruark v. Engineers' Union*, 157 Md. 576, 583, *et seq.*, and *Glickfeld v. State*, 203 Md. 400, 404. Section 509 clearly informs those who read it as to the type of articles that may be sold on Sunday in Anne Arundel County. We think that a person of ordinary intelligence could know with a fair degree of precision what [fol. 102] he could or could not sell.

As the Supreme Court has noted, a statute is not to be condemned because there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls. *United States v. Petrillo*, 332 U.S. 1, 7, 91 L.Ed. 1877 (there the statute, upheld against the defense of unconstitutional vagueness, made it a criminal offense to coerce a radio broadcaster to employ or agree to employ, any persons in excess of the number needed to perform actual services). In *Boyce Motor Lines v. United States*, 342 U.S. 337, 339, 340, 96 L.Ed. 367, 370, 371, there was involved the regulation of the Interstate Commerce Commission, authorized by 18 U.S.C. Sec. 835, that required a driver of an interstate motor vehicle, transporting explosive or inflammable substances, to avoid "so far as practicable, and, where feasible, by prearrangement of routes, driving into or through congested thoroughfares, places where crowds are assembled, street car tracks, tunnels, viaducts, and dangerous crossings." The Supreme Court said, treating the regulation as a criminal statute: "... no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line." In *Sproles v. Binford*, 286 U.S. 374, 393, 76 L.Ed. 1167, 1182, the words in a criminal statute "shortest practicable route" were held not too vague to be unconstitutional.

[fol. 103] The court should have directed verdicts for them say five of the appellants. One sold a toy submarine and four sold staplers. It is argued that the submarine is "merchandise" and the staplers "accessories" that are "customarily sold at" a bathing beach. There was no error in refusing to direct the verdicts. It is not so clear that these articles are customarily sold at a bathing beach that the court could so rule as a matter of law. It was for the trier of fact to decide whether the submarine and the stapler had been excepted by the statute or not. *Callan v. State*, 156 Md. 459, 466, 467. There the accused was convicted of running an "opera house" on Sunday. He claimed reversible error in the refusal of the trial court to permit him to produce a witness to testify "as to what is an opera house" in

support of his contention that his business, that of showing motion pictures, was not within the meaning of that term. This Court rejected that contention on the ground that what constituted an opera house was a question to be decided by the jury on the basis of "ordinary experience."

The judgments will be affirmed.

Judgments Affirmed, With Costs.

[fol. 104]

IN THE COURT OF APPEALS OF MARYLAND

No. 237

September Term, 1958

MARGARET M. McGOWAN, et al.

—v.—

STATE OF MARYLAND

BRUNE, C.J.
HENDERSON,
HAMMOND,
HORNEY,
JJ.

OPINION BY HAMMOND, J.

Filed: May 14, 1959

[fol. 105]

IN COURT OF APPEALS OF MARYLAND
No. 237, September Term, 1958

MARGARET M. McGOWAN et al.

—v.—

STATE OF MARYLAND

Appeal from the Circuit Court for Anne Arundel Co.
Filed: January 9, 1959

May 14, 1959, Judgments affirmed, with costs. Op. Hammond, J.

MANDATE

Statement of Costs:

Record	\$ 24.00
Steno. costs	290.00
Filing Record on Appeal	\$ 20.00
Printing Brief for Appellant	634.27
Appearance Fee—Appellant	10.00
Printing Brief for Appellee	111.50
Appearance Fee—Appellee	10.00

State of Maryland, Set:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my
(Seal) hand as Clerk and affixed the seal of the Court
of Appeals, this fifteenth day of June A. D. 1959
109 J. Lloyd Young, Clerk of the Court of Appeals
of Maryland.

Costs shown on this Mandate are to be settled between
counsel and Not Through This Office

[fol. 106] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 107]

IN THE COURT OF APPEALS OF MARYLAND

September Term, 1958

No. 237

MARGARET M. MCGOWAN, et al., Appellants,

—v.—

STATE OF MARYLAND, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed August 3, 1959

I. Notice is hereby given that Margaret M. McGowan, Nina Lee Shiflet, Herbert Mayers, Eugene L. Hopper, Samuel Schepps, Betty R. Sawyer, and Dora M. Joswiak, the Appellants in the above-entitled cause, hereby appeal to the Supreme Court of the United States from the final order of the Court of Appeals of Maryland affirming the judgment of conviction by the Circuit Court of Anne Arundel County on October 28, 1958, entered herein on May 14, 1959.

This appeal is taken pursuant to 28 U.S.C., sec. 1257.

Appellants were convicted of the crime of making sales on Sunday, September 28, 1958, in violation of Section 521 of Article 27 of the Maryland Code prohibiting the sale of merchandise, with certain exceptions, on Sunday and fined Five Dollars (\$5.00) and costs.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the clerk of the Supreme Court of the United States, and include in said transcript the following:

- a. Docket entries and judgment and exhibits
- b. Testimony in open Court before Hon. Benjamin Michaelson

e. Court's remarks

d. Opinion by the Court of Appeals of Maryland

[fol. 108] III. The following questions are presented by this appeal:

a. Whether the Sunday Blue Laws applicable to Anne Arundel County are unconstitutional in that

1. They contravene the 14th Amendment to the Constitution of the United States and Articles 19 and 23 of the Maryland Declaration of Rights because they embody arbitrary and capricious classifications which unlawfully discriminate in favor of certain sales and others,
2. The legislature in its enactment of the law has deprived citizens of one part of the State of rights and privileges which they enjoy in common with the citizens of all other parts of the State constituting classification legislation for Anne Arundel County making certain Sunday sales a crime,
3. They are arbitrarily discriminatory and so vague as to fail to give reasonable notice of the conduct intended to be prohibited thereby,
4. The Maryland Sunday Blue Laws applicable to Anne Arundel County violate the guarantee of freedom of religion contained in the 1st and 14th Amendments of the Constitution of the United States.

Harry Silbert, A. Jerome Diener, Sidney Schlachman,
Silbert, Gomborov & Diener, 200 Equitable Building,
Baltimore 2, Maryland, Lexington 9-2711.
Attorneys for Appellants.

[fol. 109] Proof of Service (omitted in printing).

[fol. 110]

SUPREME COURT OF THE UNITED STATES

No. 438—October Term, 1959

MARGARET M. McGOWAN, et al., Appellants,

— v. —

MARYLAND.

ORDER NOTING PROBABLE JURISDICTION—April 25, 1960

Appeal from the Court of Appeals of the State of Maryland.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the summary calendar and set for argument immediately following No. 532.

April 25, 1960